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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures
Committee on Safeguards

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NOTIFICATIONS OF LAWS AND REGULATIONS UNDER ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS

UKRAINE

Supplement

The following communication, dated 31 January 2013, is being circulated at the request of the Delegation of Ukraine.

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Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures, and Article 12.6 of Agreement on Safeguards, the Government of Ukraine is pleased to notify the amendments to the relevant legislation notified as G/ADP/N/1/UKR/1, G/SCM/N/1/UKR/1, G/SG/N/1/UKR/1 of 25 June 2008, as follows.

The attached laws and regulations are unofficial translation. The texts are effective laws and regulations which were amended in 2012.

List of laws and regulations attached:

The customs code of Ukraine (abstract from chapter 42) as amended and supplemented by the laws of Ukraine No. 4915-VI of 7 June 2012, No. 4999-VI of 21 June 2012, No. 5018-VI of 21 June 2012, No. 5043-VI of 4 July 2012, No. 5076-VI of 5 July 2012, and No. 5406-VI of 2 October 2012;

The Law of Ukraine "On protection of the national producer against dumped imports", 22 December 1998, n 330-XIV (with changes and amendments);

The Law of Ukraine "On protection of national industry against subsidized imports", 22 December 1998, no.331-XIV (with changes and amendments);

The Law of Ukraine "On application of safeguard measures against imports to Ukraine", 22 December 1998, no.332-XIV (with changes and amendments);

Abstract from the law no 959-XII of 16 April 1991 "On foreign economic activity" (articles 1, 9 and 31);

Resolution of the Cabinet of ministers of Ukraine "On approving the procedure for protecting interests of domestic producers during the conduct by foreign countries, their economic or customs unions of antidumping, special safeguard and countervailing investigations in respect of imports of Ukrainian origin".

LIST OF LAWS AND REGULATIONS ATTACHED

THE CUSTOMS CODE OF UKRAINE AS AMENDED AND SUPPLEMENTED BY THE FOLLOWING LAWS OF UKRAINE: NO. 4915-VI OF 7 JUNE 2012, OFFICIALLY PUBLISHED IN *BULLETIN OF THE VERKHOVNA RADA OF UKRAINE* (*BVRU*), 2012, ISSUE 51, PP. 2034; NO. 4999-VI OF 21 JUNE 2012, *BVRU*, 2012, ISSUE 55, PP. 2203; NO. 5018-VI OF 21 JUNE 2012, *BVRU*, 2012, ISSUE 59, PP. 2365; NO. 5043-VI OF 4 JULY 2012, *BVRU*, 2012, ISSUE 62, PP. 2507; NO. 5076-VI OF 5 JULY 2012, *BVRU*, 2012, ISSUE 62, PP. 2509; AND NO. 5406-VI OF 2 OCTOBER 2012 3

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BY THE FOLLOWING LAWS OF UKRAINE:
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NO. 4999-VI OF 21 JUNE 2012, *BVRU*, 2012, ISSUE 55, PP. 2203;
NO. 5018-VI OF 21 JUNE 2012, *BVRU*, 2012, ISSUE 59, PP. 2365;
NO. 5043-VI OF 4 JULY 2012, *BVRU*, 2012, ISSUE 62, PP. 2507;
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NO. 5406-VI OF 2 OCTOBER 2012

(Excerpts)

Chapter 42. Customs duty

Article 271. Customs duty and types thereof

1. The customs duty is a nationwide tax established by the Tax Code of Ukraine and this Code that is calculated and paid in accordance with this Code, Laws of Ukraine and international agreements the consent to the obligatoriness of which was given by the Verkhovna Rada of Ukraine.
2. The following types of customs duty shall be used in Ukraine:

1) import duty;

2) export duty;

3) seasonal duty; and

4) special types of customs duty: special (safeguard) duty, antidumping duty, and countervailing duty.

3. It shall be prohibited to use any types of customs duty other than those established by this Code.

Article 275. Special types of customs duty

1. In cases provided by Laws of Ukraine (if international agreements the consent to the obligatoriness of which was given by the Verkhovna Rada of Ukraine do not establish otherwise), in order to defend the economic interests of Ukraine and Ukrainian commodity producers, the following special types of customs duty may be used in relation to products imported into the custom territory of Ukraine, independently of other types of customs duty:

1) special (safeguard) duty;

2) antidumping duty; and

3) countervailing duty.

2. Special types of customs duty shall be imposed on the grounds of decisions of the Interdepartmental Commission on International Trade of Ukraine regarding the application of antidumping, countervailing or special (safeguard) measures (trade remedies) adopted in accordance with the Laws of Ukraine “On Protection of National Commodity Producers Against Dumping Imports”, “On Protection of National Commodity Producers Against Subsided Imports”, “On the Use of Special (Safeguard) Measures in Relation to Imports in Ukraine”.

3. A special (safeguard) duty shall be imposed:

1) as a measure to protect national commodity producers in cases when products are imported into the customs territory of Ukraine in such quantities and/or under such conditions as to cause or threaten to cause serious injury to domestic commodity producers;

2) as a countermeasure in response of discriminatory and/or unfriendly actions of other countries, custom unions and economic associations that limit the fulfillment of legitimate rights and interests of entities of international economic activity of Ukraine.

4. An antidumping duty shall be imposed in accordance with the Law of Ukraine "On Protection of National Commodity Producers Against Dumping Imports" in case of importing into the customs territory of Ukraine of products which are object of dumping, which causes or threatens to cause injury to domestic commodity producers.

5. A countervailing duty shall be imposed in accordance with the Law of Ukraine "On Protection of National Commodity Producers Against Subsided Imports" in case of importing into the customs territory of Ukraine of products which are object of subsided import, which causes or threatens to cause injury to domestic commodity producers.

Article 280. Rates of customs duty

1. The following rates of customs duty shall be used in Ukraine:

1) ad valorem rate of duty as a percentage of the taxable base established by Article 279 of this Code;

2) specific rate of duty as a monetary value per unit of the taxable base established by Article 279 of this Code;

3) combined rate of duty consist of the ad valorem and specific rates of duty.

2. It shall be prohibited to use any types of customs duty rates other than those established in part one of this Article.

3. Rates of customs duty, except for seasonal and special types of customs duty, shall be established solely by Laws of Ukraine on taxation.

4. Import duty on products that undergo customs clearance in accordance with the procedure established for enterprises shall be calculated in accordance to the rates established by the Customs Tariff of Ukraine.

5. Import duty shall be differentiated for products originated from countries that are members of customs unions or free trade agreements together with Ukraine. In the case of establishing of any special preferential customs regime in accordance with international agreements the consent to the obligatoriness of which was given by the Verkhovna Rada of Ukraine, preferential rates of import duty established by customs tariffs of Ukraine shall be applied.
Preferential rates of import duty established by Customs Tariff of Ukraine shall be applied to products originating from Ukraine or from member countries of the World Trade Organization (WTO) or from countries with which Ukraine signed bilateral or regional agreements in regard to the most favored-nation treatment, if Laws do not establish otherwise.
Full rates of import duty established by Customs Tariff of Ukraine shall be applied to all the other products.

6. Import duty on products that undergo customs clearance in accordance with the procedure established for individuals shall be calculated in accordance with Chapter XII of this Code.

7. Export duty shall be calculated in accordance with the rates established by law.

8. Seasonal duty shall be calculated in accordance with the rates established by the Law of Ukraine "On State Regulation of Imports of Agricultural Products".

9. Special types of customs duty shall be calculated in accordance with the rates established by decisions of the Interdepartmental Commission on International Trade on application of antidumping, countervailing or special (safeguard) measures in accordance with the Laws of Ukraine "On Protection of Nation Commodity Producers Against Dumping Imports", "On Protection of National Commodity Producers Against Subsidized Imports" and "On Application of Special (Safeguard) Measures in Relation to Imports into Ukraine".

Article 281. Tariff privileges (tariff preferences)

1. It shall be allowed to establish tariff privileges (tariff preferences) concerning rates of the Customs Tariff of Ukraine in the form of an exemption from taxation on import duty, reduction of rates of import duty or establishing of tariff quotas in accordance with legislation of Ukraine on the import of products that originate from countries with which appropriate agreements with Ukraine have been signed.

2. Tariff quotas in the form of establishing of volumes or quantities of some products to be imported into the customs territory of Ukraine at the determined period under a reduced rate of import duty shall be established by separate Laws.

3. Imports of products into the customs territory of Ukraine outside tariff quotas shall be carried out without reducing rates of import duty.

4. It shall be forbidden to reduce rates of import duty for certain individuals and under individual contracts.

5. If the import of the product is an object of antidumping, countervailing or special (safeguard) measures, tariff privileges (tariff preferences) shall not be established or shall be stopped or suspended, if not otherwise stipulated by international agreements the consent to the obligatoriness of which was given by the Verkhovna Rada of Ukraine.

Article 288. Peculiarities of taxation by special types of customs duty

1. Special (safeguard) duty, antidumping duty and countervailing duty shall be applied independently of the other types of customs duty under conditions determined by law.

2. The part two has been removed.
(as amended in accordance with the Law of Ukraine No. 4915-VI of 07 June 2012)

Article 335. Submission of documents and information required for customs control

1. While moving products and/or vehicles of commercial purpose through the customs border of Ukraine, the declarant or a person authorized by them, or the carrier, depending on the type of transportation used to transport the products, shall provide the following documents and information in a printed or electronic form to the customs authority:

1) documents and information to be presented in case of automobile transportation:

а) / a) documents for the vehicle being used, among other, documents that contain information on the official registration of the vehicle (belonging thereof to a particular country);

б) / b) transportation (freighting) documents (international bills of lading);

в) / c) a document that accompanies international postal items (if any) as stipulated by acts of the Universal Postal Union;

г) / d) commercial documents (if any) for the products being transported which contain, information on the carrier's name and address, name of the country of origin and the country of destination of the products, the consigner's (or vendor's) name and address and the recipient of the products;

ґ) / e) information on the quantity of cargo places and type of packaging;

д) /f the names of the products being transported;

е) / g) the gross weight of the products (in kilograms) or volume of the products (in cubic meters), except for large-sized cargo;

2) documents and information to be presented in case of water transportation:

а) / a) the general declaration that contains, among other information, the name and description of the ship, information on the official registration of the vehicle (belonging thereof to a particular country), the name of the skipper / captain of the ship, and the name and address of the ship's agent;

б) / b) the declaration for the cargo being transported that includes, among other information, the names of the ports visited or entered by the ship, the ports of loading and unloading of the products that remain on board of the ship, the list of bills of lading or other documents that confirm the existence and content of the contract of maritime (or river) transportation, the quantity of cargo places used for the product, description and the type of products packaging of the products that have to be unloaded in this port;

в) / c) the document that contains, among other information, information on the name of the stock on board and the quantity or amount (or volume) of the stock on board;

г) / d) the declarations for personal items in possession of the crew of the ship;

ґ) / e) a document that contain the following information on roles of crew members on the ship: quantity and list of crew members at the moments of arrival and departure of the ship, among other information, the names, citizenship, title or position, date and place of birth, and type and number of an identification document;

д) / f) a list of passengers that contains information on the passengers, on the times of arrival and departure of the ship, among other information, on the quantity of passengers on board and their surnames and given names, and citizenship, date and place of birth for each passengers, and the ports of embarkation and disembarkation;

е) / g) a document that accompanies international postal items (if any) as stipulated by acts of the Universal Postal Union;

є) / h) shipping (transportation) documents for the products (if any) that contain information, among other, on the total quantity or amount of products, quantity of packages, name of products, and type of package;

ж) / i) commercial documents (if any) for the products and information on the placement of products on board;

з) / j) information on the presence (or absence) of any products on board of the ship that have been prohibited or restricted for entry into the customs territory of Ukraine, including amount of foreign currencies belonging to members of the crew, medicines that contain drug (narcotic) substances, strong medicines, and psychotropic and poisoning substances;

и) / k) information on the presence (or absence) of any dangerous products, weapons and ammunition on board;

3) documents and information to be presented in case of air transportation:

а) / a) the carrier's standard document stipulated by international contracts signed in accordance with legislation governing civil aviation (the general declaration);

б) / b) documents that contain information on the products being transported on board (consignment notes and airway bills or airway bill of lading);

в) / c) the document that contains information on the stock (the stock on board) and the quantity or amount (or volume) of the stock (the stock on board) loaded on board of the ship and unloaded from the ship;

г) / d) shipping (transportation) documents for the products;

ґ) / e) commercial documents for the products being transported (if the carrier has such documents in their possession);

д) / f) a document that accompanies international postal items (if any) as stipulated by acts of the Universal Postal Union;

е) / g) information on the nationality and registration number of the aircraft, flight number, flight itinerary, and points of departure and arrival of the aircraft;

є) / h) information on the name of the company (or organization or institution) which uses the aircraft, and the quantity of crew members;

ж) / i) a list of passenger that contains the quantity of passengers on board of the ship, the surnames and initials, points of departure and arrival of passengers and information on luggage of the passengers (the passenger list);

з) / j) the names of the products, consignment note numbers, quantities of packages per each consignment, and points of loading and unloading of the products;

и) / k) information on the presence (or absence) on board of any products that have been prohibited or restricted for entry into the customs territory of Ukraine, including amounts of foreign currencies belonging to members the crew, drugs, medicines that contain drug (narcotic) substances, strong medicines, and psychotropic and poisoning substances;

і) / l) information on the presence (or absence) of any dangerous products, weapons and ammunition on board;

4) documents and information to be presented in case of railway transportation:

а) / a) shipping (transportation) documents for the products;

б) / b) a register of acceptance for the railway rolling stock;

в) / c) a document that confirms the presence of stock (if any);

г) / d) a document that accompanies international postal items (if any) as stipulated by acts of the Universal Postal Union;

ґ) / e) commercial documents for the products being transported (if the carrier has such documents in their possession);

5) documents and data to be presented during international transportation through pipelines and electric power lines:

а) / a) an international economic agreement (contract) or other documents that confirm the right of possession, use and/or disposal of the products;

б) / b) a statement on the acceptance of the products or a certificate confirming the amount of the products;

в) / c) commercial and accompanying (or supporting) documents (if the owner of the pipeline or power line has them in their possession) on the products which are being moved through the customs border of Ukraine, and an invoice for the products for the moment of customs clearance thereof;

г) / d) the name and address of the sender of the products;

ґ) / e) the name and address of the recipient of the products;

д) / f) documents (permissions or certificates) that confirm the characteristics of the products.
2. Irrespective of the type of transport conveying the products, during arrival of the products to a checkpoints of the customs border of Ukraine the documents (or information) or the details thereof shall be provided, including those by means of information technology (or in the form of an electronic document), to confirm observance of prohibitions and/or restrictions in accordance with the legislation of Ukraine on the products crossing the customs border of Ukraine, except those required solely for placement of the products under a customs regime.

3. An invoice or other document indicating the value of the product and, in cases set out in this Code, a declaration of the customs value shall be submitted to customs authorities with the customs declaration. The declarant or a representative authorized by them shall enter the following information in the customs declaration under the procedure established by this Code:

1) documents that confirm the authority of the person who is submitting the customs declaration;

2) an international economic agreement (contract) or other documents that confirm the right of possession, use and/or disposal of the products;

3) shipping (transportation) documents;

4) commercial documents in possession of the person who is submitting the declaration;

5) if required, documents that confirm observance of measures of non-tariff regulation of international economic activity;

6) documents that confirm observance of restrictions arising from safeguard, antidumping or countervailing measures (if any of the above restrictions are in place);

7) in cases set out in this Code, documents that confirm the country of origin of the product;

8) if required, documents that confirm payment and/or guarantee of payment of customs charges;

9) if required, documents that confirm the right to any customs preferences in regard to payment of customs charges, or to full or partial exemption from customs duties in accordance with the customs regime chosen;

10) if required, documents that confirm the change of terms of payment of customs charges;

11) if required, document that confirm the declared customs value of the products and the chosen method of determining thereof in accordance with Article 53 of this Code.

4. During submission of the prior notification of the intent to convey the products and motor vehicles for commercial use through the customs border of Ukraine to the customs authority, the following documents and/or information shall be submitted to the customs authority, including those by means of information technology:

1) for the import of the products into the customs territory of Ukraine:

а) / a) the application drawn up in the established form on the intent to import the products into the customs territory of Ukraine (the prior notification or the preliminary customs declaration);

б) / b) information on the name, volume (amount, quantity) and the value of the products planned to be imported into the customs territory of Ukraine;

в) / c) the type of transportation method planned to be used to import the products into the customs territory of Ukraine;

г) / d) the name of the checkpoint at the customs border of Ukraine (or that of the customs authority) through which the products are planned to be imported;

ґ) / e) information about documents that confirm observance of prohibitions and/or restrictions which have been imposed in accordance with the legislation on the products crossing the customs border of Ukraine;

2) for the export of the products from the customs territory of Ukraine, the customs declaration for the products or accompanying documents for the products in cases set out in this Code shall be submitted to the customs authority for customs clearance.

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THE LAW OF UKRAINE

THE LAW "ON PROTECTION OF THE NATIONAL PRODUCER AGAINST DUMPED IMPORTS", 22 DECEMBER 1998, N 330-XIV (WITH CHANGES AND AMENDMENTS)

As amended and added by the Laws of Ukraine
N 1595-III of 23 March 2000,
N 860-IV of 22 May 2003,
N 3027-IV of 1 November 2005,
(changes made under paragraph 16 of part I of Law of Ukraine
of 1 November 2005 N 3027-IV, took effect
on 16 May 2008 – the date of Ukraine's accession to the World Trade Organization),
N 252-VI of 10 April 2008,
N 4496-VI of 13 March 2012,
N 5060-VI of 5 July 2012

(In the text of the Law words "the Ministry of Economy of Ukraine"
and "the Minister of Economy of Ukraine" were replaced with the words
"the central body of executive power in the field of economic policy"
and "the Minister of Economy and European Integration of Ukraine"
according to the Law of Ukraine N 860-IV of 22 May 2003)

(In the text of the Law the word "Ukraine" was replaced with the words "importing country", except for part two of Article 2, Article 3, Article 4, Article 5, part eleven of Article 12, part fourteen of Article 14, paragraph two of part two, part four and part five of Article 24, part five of Article 28, Article 34, and Article 38 according to the Law of Ukraine N 3027-IVof 1 November 2005)

This Law shall establish the mechanism of protection of the national producer against dumped imports from other countries, customs unions or economic groups. It shall also condition the principles and the procedure of initiation and conducting of an anti-dumping investigations and application of anti-dumping measures.

Chapter I
GENERAL PROVISIONS

Article 1. Definition of Terms

Terms in this Law shall be used in the following meaning:

(1) anti-dumping measures – provisional or final measures, applied in the process of an anti-dumping investigation or due to its results, according to this Law;

(2) anti-dumping duty (provisional or definitive) – special type of duty imposed on goods, imported into the customs territory of the importing country, subject to application of anti-dumping measures (provisional or final);

(3) positive conclusion as to the presence of dumping (damage) – conclusion as on the presence of a fact of dumping (damage);

(4) negative conclusion as to the presence of dumping (damage) – conclusion on the absence of a fact of dumping (damage);

(5) dumping – importation of goods into the customs territory of the importing country at lower prices than the comparable prices for the similar goods of the exporting country, which causes damage to the national producer of similar goods;

(6) margin of dumping – amount to which the normal value exceeds the export price. The procedure of determination of dumping margin is specified in Article 9 of this Law;

(7) export price – a price which is actually paid or subject to payment for goods being sold to an importing country from the exporting country. The procedure of establishing of an export price is stipulated in Article 8 of this Law;

(8) damage – substantial damage caused to the national producer or a threat of substantial damaging to the national producer or substantial impediment to creation or expansion of production of similar goods by the national producer. The procedure of determination of damage is stipulated in Article 10 of this Law;

(9) import – bringing into the customs territory of an importing country of goods, destined for the consumption within this importing country;

(10) importer – a subject of economic and legal relations who declares the goods' supply to the customs territory of the importing country;

(11) competent bodies – bodies of state power of a country of origin or exporting country (customs union or economic group) which ensure providing of internal and (or) foreign economic policy within the scope of their authorities;

(12) establishing of an export price – calculation of a certain size of an export price where the actual export price has not been established, or it is considered ungrounded. The procedure of establishing of an export price is specified in Article 8 of this Law;

(13) exporting country – a country of origin of goods, imported into the importing country. An intermediary country (customs union or economic group) may be an exporting country as well, except cases, where the specified goods are conveyed as transit through this country, are not produced in this country or these goods have no comparable price in this country;

(14) importing country – Ukraine;

(new clause 14 was added to Article 1
according to the Law of Ukraine N 3027-IV of 1 November 2005,
therefore clauses 14 - 27 shall be considered clauses 15 - 28)

(15) country of origin – a country (customs union or economic group) in which the goods have been totally manufactured or subject to sufficient processing or treatment;

(16) national producer – aggregate number producers of similar goods or those producers whose aggregate production of such goods constitutes the major proportion of the whole amount of production of such goods in the importing country. The peculiarities of identification of the national producer are determined in Article 11 and part six of Article 12 of this Law;

(17) normal value – equivalent of the goods' price in the domestic market. The procedure of determination of a normal value is stipulated in Article 7 of this Law;

(18) period of investigation – period, preceding the initiation of an anti-dumping investigation, within which the facts of the presence of dumping are investigated. The procedure of determination of the period of investigation is specified in Article 13 of this Law;

(19) sales – transfer of property by one person into ownership or use and (or) possession and (or) at disposal of other person, particularly, transfer under the agreements of purchase and sale, property lease, other civil and legal agreements, or in case of substitution of one obligation by another, or changes in the terms of obligations' fulfillment;

(20) parties of an anti-dumping investigation – a foreign producer, exporter, importer, union (association), competent authorities of the exporting country, national producer etc., which have been notified of the initiation of an anti-dumping investigation according to the established procedure;

(21) interested party – any person notifying the central body of executive power in the field of economic policy (hereinafter – "the Ministry") of his interest in participation in an anti-dumping investigation in accordance with part twelve of Article 12 of this Law and who is taking an active part in the anti-dumping investigation through providing written evidence or other information, sufficient for the purposes of this investigation. The following may be the interested parties:

(paragraph one of clause 21 of Article 1 is as amended by the Law of Ukraine N 1595-III of 23 March 2000)

- a foreign producer, exporter or importer of goods subject to an investigation, or union (association), where the majority of members make foreign producers, exporters or importers of goods subject to an anti-dumping investigation;
- the competent bodies of an exporting country of goods subject to an investigation;
- a national producer, manufacturer or wholesale seller of similar goods in the importing country;
- a union (association) where most of its members produce or perform a wholesale trade of similar goods in the importing country;
- a trade union, uniting the employees of enterprises producing or performing a wholesale trade of similar goods in the importing country;
- bodies of executive power of the importing country within the scope of their authority;

(22) traditional trade operations – conditions and business practice which within a substantial term preceding the export of goods, subject to an investigation, were traditional for trade with such goods, or goods having similar conditions of production, sales or marketing;

(23) comparable price – price of the similar goods in the exporting country that is practiced in the traditional trade operations;

(24) goods – any products for sale;

(25) goods with a short-term product cycle – goods which due to emerging of advanced technologies are recognized outdated, according to the conclusion of the Ministry and Interdepartmental International Trade Commission (hereinafter - the Commission). The procedure of determination of goods with a short-term product cycle is specified in Article 26 of this Law;

(26) similar goods – identical goods i.e. alike by all characteristics on goods subject to an investigation, or in case of the absence of such goods, other goods, which though are not alike by all characteristics, have indicative signs, closely resembling those of the goods subject to an investigation;

(27) goods subject to an investigation – goods importation of which into the importing country subject to an anti-dumping investigation and which are identified as such in the corresponding notification on initiation and conducting of the specified investigation;

(28) Ukrainian producers – producers of the similar goods or immediately competitive goods, manufactured in the importing country.

Article 2. Sphere of Application of this Law

1. This Law shall be applied to the import of goods which are a subject of dumping, provided such import causes damage to the national producer of similar goods.

The goods shall be considered a subject of dumping where their export price in the importing country is lower than a comparable price of similar goods in the exporting country in traditional trade operations.

2. This Law does not include the application of:

(1) special rules in the field of agriculture;

(2) measures applied within the General Agreement on Tariffs and Trade (hereinafter – the GATT) and the World Trade Organization (hereinafter - the WTO);

(3) special rules established by the international agreements of Ukraine obligation of which has been approved by the Verkhovna Rada of Ukraine.

Article 3. Bodies Conducting the Anti-Dumping Investigation

The anti-dumping investigation in Ukraine shall be performed under the provisions of this Law by the authorized central bodies of executive power – the Ministry, State Customs Service of Ukraine (hereinafter - the Service) and the Commission.

Article 4. Language of Conducting of Anti-Dumping Investigations

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

2. Evidence, written proofs and other information provided to the Ministry, the Service or the Commission according to this Law shall be considered in the process of an anti-dumping investigation under condition they are drawn in the state language of Ukraine.

Article 5. Interdepartmental International Trade Commission

1. The Interdepartmental International Trade Commission is governed by the Head, who takes the position of the Minister of Economy and European Integration of Ukraine.

Members of the Commission shall be Chair of the Commission, their First Deputy, deputies and officials from bodies of executive power.

(new paragraph two was added to part one of Article 5 according to the Law of Ukraine N 3027-IV of 1 November 2005, therefore paragraph two shall be considered paragraph three)

The Head of the Commission, his first deputy, deputies and other members of the Commission shall be appointed according to part two of this Article.

(part one of Article 5 is as amended by the Law of Ukraine N 1595-III of 23 March 2000)

2. Part two of Article 5 is expelled:

(according to the Law of Ukraine N 1595-III of 23 March 2000, due to this, parts three - eleven shall be read as parts two-ten respectively)

3. The Cabinet of Ministers of Ukraine shall appoint the stuff of the Commission on the proposal of the Head of the Commission.

4. The work of the Commission shall have the form of sittings.

Sittings of the Commission shall be held at the Ministry's location.

Sittings of the Commission shall be held on demand of the Head of the Commission, on the grounds of a founded demand of a member of the Commission, submitted to the Head of the Commission or in other cases with observation of terms, envisaged by this Law.

5. The Sittings shall be called by the Head of the Commission and in case of his absence- by his first deputy or vice-head of the Commission and shall be held not earlier than on the fifth day and not later than on the tenth day after forwarding of the corresponding notification.

Together with the notification, all the required information regarding issues, put forward for consideration by a relevant Commission's sitting, shall be forwarded to the members of the Commission.

In case of necessity, experts of state-owned or private institutions, as well as foreign experts, may be invited to the sittings of the Commission.

6. The sitting of the Commission shall be considered authorized if not less than half of the total number of members of the Commission is present.

The Commission shall, within the scope of its authorities, take decisions, arrange and supervise their implementation. Only members of the Commission may vote for adoption of a corresponding decision.

Acts of the Commission, particularly those, concerning the performance of an anti-dumping investigation and application of anti-dumping measures, shall be obligatory for execution.

7. The following decisions may be taken at the sittings of the Commission:

(1) on initiation of an anti-dumping investigation;

(2) on positive and negative conclusions as to the presence of dumping and methods, enabling to determine the margin of dumping;

(3) on positive or negative conclusion as to the presence of damage and its size;

(4) on determination of a cause-and-effect relation between the dumped imports and the damage;

(5) on application of anti-dumping measures;

(6) on other matters within the authorities, envisaged by this Law.

8. Decisions of the Commission shall be taken by a simple majority of vote and in particular cases, envisaged by this Law, by two-thirds (qualified majority) of its members' votes.

9. Decision of the Commission, taken by a simple majority of vote, shall be deemed taken, provided the majority of members of the Commission have voted for it. In case of equal division of votes the vote of the Head of the Commission is casting.

10. Decision of the Commission taken by a qualified majority of votes shall be deemed taken, provided two-thirds of members of the Commission have voted for it.

11. In case of necessity, decisions of the Commission as to issues, specified in clause 6 of part six of this Article, may be taken under the regular procedure by means of visaing of the draft of the corresponding decision by members of the Commission. In this case the Head of the Commission shall inform the members of the Commission thereof and propose to them to express their opinion as to this matter in terms within which this opinion can be considered and which do not exceed the terms, established by this Law.

(part ten of Article 5 is as amended
by the Law of Ukraine N 1595-III of 23 March 2000)

Article 6. Terms

1. Terms of fulfillment of all the activities according to this Law shall be established by this Law or determined by the Commission or the Ministry. Right to fulfillment of any activities shall be lost upon expiration of the specified terms. All documents, submitted after expiry of these terms shall not be considered. The Commission or the Ministry may take decision on prolongation or resumption of the terms, under the presence of substantial grounds for this.

2. The terms established by this Law, or determined by the Ministry or the Commission shall be measured in years, months and days.

3. The terms may as well be determined by a reference to the event, which is inevitable to happen.

4. The term measured in years shall terminate on the respective month and date of the last year of this term.

The term measured in months shall terminate on the respective date of the last month of this year. If the ending of the term falls on the month with no respective date, such term shall expire on the last day of that month.

If the term is determined by days, it shall be measured starting from the day, following the day of the beginning of this term.

The term, determined by a reference to the event, which is inevitable to happen, shall be measured starting from the day following the date of this event's beginning.

Provided the ending of the term falls on the day-off, the first working day, following the day-off shall be the last day of that term.

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

The term shall not be deemed violated, provided prior to its expiration date documents have been submitted to the Ministry, the Service and the Commission correspondingly and registered according to the established procedure.

Chapter II
DETERMINATION OF DUMPING AND DAMAGE

Article 7. Procedure of Calculation and Determination of the Normal Value

1. Generally a normal value is determined on the basis of prices, established in the process of a traditional trade operation between the independent buyers of the exporting country.

Sales and operations may be deemed those which have not been completed within the traditional trade operations, where:

- such sale or operation have characteristics which are exclusive for the market subject to an investigation;
- sales of goods are carried out at prices that considerably differ from those, practiced in the market; with extra large profits; under not ordinary conditions of sales and (or) sales to the party who is a partner or has entered into the compensation agreement; or at prices, determination criteria of which are different from the mechanism of functioning of the market economy.

2. Where an exporter does not produce or sell the similar goods in the exporting country, the normal value shall be determined basing on the prices, established by other sellers or producers.

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

(part three of Article 7 is in the wording
of the Law of Ukraine N 3027-IV of 1 November 2005)

4. In order to determine a normal value, the sales volume of the similar goods, destined for the consumption within the domestic market of the exporting country, shall be used provided such sales volume is not less than 5 % of the sales volume of such goods in the importing country. In order to determine the normal value the sales volumes of the similar goods that are less than 5 % of the volume of sales of such goods in the importing country shall be used, under condition the established prices are deemed indicative in the market a subject to consideration.

5. If there were no sales of similar goods in the traditional trade operations or such sales were not substantial, or due to the peculiarities of the domestic market of the exporting country, such sales cannot be used for the proper comparison, a normal value of the similar goods shall be determined by means of one of the following methods:

(1) on the basis of the production costs in the country of origin, increased by the grounded amount of trade, administrative and other general costs and the grounded profit amount;

(2) on the basis of export prices, practiced in the traditional trade operations in a corresponding third country, provided such prices are considered indicative.

6. Sales of the similar goods in the domestic market of the exporting country or sales for export to a third country at prices lower than cost per unit (fixed and variable) for their production, increased by the trade, administrative and other general costs, may be treated as those, performed beyond the framework of traditional trade operations exclusively as a consequence of their price and may be not taken into account while determining a normal value, where it is established that such sales have been performed within a considerable term in substantial volumes and at prices, not enabling to recover all the costs within the grounded term.

7. In case the prices are lower than the costs by the moment of sale, but higher than the weighted average costs in the period of investigation, such prices shall be treated as those enabling to recover the costs within the grounded term.

8. Sales at prices, which are lower than per unit costs of production shall be treated as sales being carried out in substantial volumes and within a considerable period of time, provided it has been established that:

(1) the weighted average sales price is lower than the weighted average per unit costs of production; or

(2) or volume of sales at prices, that are lower than per unit costs, is not less than 20 % of sales, used for determination of the normal value.

(clause 2 of part eight of Article 7 as amended
by the Law of Ukraine N 3027-IV of 1 November 2005)

A considerable period of time shall normally mean a period up to one year but not less than six months.

9. For the purpose of this Article, costs shall be generally calculated on the basis of accounting reports of the party, a subject to an anti-dumping investigation, under condition such accounting report is made according to the principles and norms of bookkeeping, generally accepted in the country which is a subject of consideration and completely reflects the costs, related to the production and sale of goods subject to consideration.

10. The Ministry shall take into consideration the evidence, concerning the actual allocation of costs, including evidence, provided by the exporter or producer in the course of an anti-dumping investigation, under condition that in the process of the specified investigation it is proved that such allocation of costs has been traditionally exercised by the exporter or producer. Unless another method for determination of costs allocation can be applied, the specified allocation of costs shall be established on the basis of numerical indicators of goods turnover. In the event it is impossible to verify cost allocation, cost values shall be verified and accordingly adjusted by the value of:

(1) non-replacement cost items which produce an effect for the current and (or) future production; or

(2) items of costs which taking into account the corresponding circumstances, during the period of investigation were destined for launching the production.

11. Provided within a certain period of time, required for the recovery of production costs, such costs were caused by utilization of a new production equipment which requires substantial additional investments, or by low factors of utilization of the production capacity due to launching the production, which took place within the whole or a certain period of an investigation, the average costs at the stage of launching the production are those costs which are included to the weighted average costs amount, specified in part seven of this Article, incurred at the end of the stage of launching the production and calculated by means of measurement of the period subject to an investigation, according to part ten of this Article. Duration of the stage of launching the production shall be determined in accordance with the circumstances that arose for the producer or exporter of goods subject to an investigation, but shall not exceed the relevant initial stage of the period, required for the recovery of production costs. For the purpose of adjustment of costs, incurred within the period of an investigation, any information related to the stage of launching the production which exceeds such period, shall be taken into account under condition it has been filed before the beginning of verifications according to Article 29 of this Law, and within three months from the date of initiation of an anti-dumping investigation.

12. The amounts of trade, administrative or any other general costs, as well as amounts of profits shall be established on the grounds of actual data concerning the production and sale of similar goods by the exporter or producer, subject to an anti-dumping investigation, in the course of traditional trade operations. Where the specified amounts cannot be determined on the basis of actual data, they shall be determined on the grounds of:

(1) the weighted average actual amounts paid or received by other exporters or producers subject to an anti-dumping investigation during production and sale of the similar goods in the domestic market of a country of origin;

(2) the actual amounts paid or received by the exporter or producer, subject to consideration, during production and sale within the traditional trade operations in the domestic market of a country of origin of the same category of goods;

(3) any other acceptable and grounded method, on condition the amount of profit so established shall not exceed the profit, generally received by other exporters or producers in case of sales of goods of the same category in the domestic market of a country of origin.

Article 8. Procedure of Settlement and Determination of the Export Price

1. The export price of goods is a price, which is actually paid or is subject to payment for goods from the exporting country, which are sold in the importing country.

2. In case the export price is not established or it is deemed ungrounded (due to the presence of partnership or compensation agreement or an agreement between the exporter, importer or the third party), the export price may be established:

(1) on the basis of the price at which the imported goods are first resold to an independent buyer; or

(2) any other acceptable grounded basis, provided the goods are not resold to an independent buyer, or are not resold in the condition in which they have been imported.

3. In cases stipulated in part two of this Article, in order to establish a grounded export price of goods subject to consideration, all costs, including taxes and fees (compulsory payments), charged for import or resale, as well as profits received, shall be adjusted in the customs territory of the importing country.

4. The costs, subject to adjustment, shall normally include those costs, incurred by an importer, but paid within the territory of the importing country or outside its borders by each of the parties, which may be a partner or a party that entered into the compensation agreement with an importer, exporter or a third party. Particularly adjustment shall be carried out with respect to:

(1) transportation, insurance, and shipment costs as well as additional costs;

(2) customs duty, anti-dumping duty, other taxes and fees (compulsory payments), charged on the import or sale of goods;

(3) grounded amounts of trade, administrative and other general costs as well as profits.

Article 9. Comparison of the Normal Value with the Export Price and Determination of a Margin of Dumping

1. In order to determine the dumping margin, the normal value, established, according to Article 7 of this Law, shall be compared with the export price, established according to Article 8 of this Law. Such a comparison shall be performed on the basis of identical basic delivery terms (normally FOB plant) for the sales, carried out on the closest date, pursuant to which the corresponding information is available. The basic delivery terms shall be determined according to the International rules of interpretation of commercial terms "Incoterms". The corresponding adjustment in this case shall be performed taking into account the amounts of differences, affecting the comparability of prices, i.e. the differences, calculated in the course of adjustment of the factors, stipulated in clauses 1-11 of part four of this Article.

(part one of Article 9 is amended pursuant to Law of Ukraine of 05 July 2012 N 5060-VI)

2. Unless the normal value and the export price, determined according to this Law, can be compared in accordance with part one of this Article, the adjustment of amounts of differences, calculated in the course of adjustment of the factors, of the presence of which the interested parties stated in the process of an anti-dumping investigation and which are proved to affect the prices and their comparability, shall be performed. While performing the specified adjustments, no repeated adjustment shall be made as to reductions, volumes and basic terms of delivery.

3. An interested party, which demands an adjustment, should prove that this demand is substantiated.

4. An adjustment as to calculation of amounts of differences in the below stated factors which affect the comparability of prices shall be carried out under such rules with respect to:

(1) physical characteristics.

The normal value and the export price shall be adjusted correspondingly by the amounts which suit the accepted amounts of differences in the market value of goods, subject to consideration, depending upon their physical characteristics;

(2) taxes and fees (compulsory payments) charged on the imports.

The normal value shall be adjusted by the amounts of compulsory payments, charged upon the imports of goods, and (or) indirect taxes and fees charged on the similar goods and (or) materials, which are their physical components (in the amount of actual payment), provided these goods are destined for the consumption in the exporting country and which shall be refunded in case of exportation of these goods into the importing country.

(3) rebates and volumes of sales.

The rebates (price rebates, other trade rebates, privileges, etc.) used for stimulation of sales and (or) increase in the volumes of sales, shall be taken into account if they have been actually applied or where there are sufficient evidence to consider that such rebates are provided and they are directly related to goods subject to consideration.

The normal value and export price shall be adjusted correspondingly by the amounts of differences in the rebates, including those, provided in accordance with the sales volumes, if such rebates has been properly calculated pursuant to the sales volumes of goods subject to consideration and directly concern the aforementioned sales. An adjustment by the amount of the deferred rebates shall be also completed, provided the demand of an interested party is based on the actual data for the previous periods as to acquisition of rebates, including the agreement on the volumes of sales;

(4) basic terms of delivery.

Basic delivery terms for the adjustment shall be the terms of FOB plant. An adjustment by the amount of differences in the basic terms of delivery shall be performed where:

- it has been established that for the sales network within two markets the export price, including the established export price, is practiced on the basis of different basic terms of delivery regarding the normal value;
- such difference in the aforementioned basic delivery terms affects the comparability of prices which could be proved by the presence of constant and clear distinctions in functions and differences in prices of the sellers because of the different terms of delivery in the domestic market of the exporting country.

The normal value and the export price shall be adjusted correspondingly by the amounts of differences so established in the market value of goods, subject to consideration;

(5) transportation, insurance, loading (unloading) costs and additional costs.

The normal value and the export price shall be adjusted correspondingly by the amounts of differences in costs, directly related to the goods subject to consideration, and shall be paid for delivery of goods from the exporter's warehouses to the first independent buyer's location only under condition such costs are included into the specified prices. These prices include the transportation, insurance, and shipment costs as well as additional costs;

(6) packaging costs.

The normal value and the export price shall be adjusted correspondingly by the amounts of differences in costs, directly related to the packaging of goods, subject to consideration;

(7) costs of credit.

The normal value and the export price shall be correspondingly adjusted by the amounts of differences in values of the credit, granted for the relevant sales of goods, in case such factor is used while establishing the price for these goods;

(8) after-sale costs.

The normal value and the export price shall be correspondingly adjusted by the amounts of differences in direct costs, directly connected with providing surety, technical assistance (consultations) and services, envisaged by the legislation of an exporting country (country of origin or comparison) and (or) purchase and sale contract;

(9) commission fee.

The normal value and the export price shall be correspondingly adjusted by the amounts of differences in commission fees paid in the process of sales of goods, subject to consideration;

(10) currency conversion costs.

Where the comparison of prices requires a conversion of currencies, such a conversion shall be completed at the exchange rate as of the date of sale of goods subject to consideration.

In case a sale of foreign currency, directly connected with the sale for export, has been performed under the forward agreements the exchange rate, which is practiced in sales under the forward agreements, shall be used. The date of the sale under the forward agreement shall be the date, specified in the corresponding invoice, however the date of signing the contract, date of order or date of confirmation of the order as well as other date, provided it is more appropriate for establishing of considerable sales conditions, may be used as well.

In the process of an anti-dumping investigation current fluctuations in exchanging rate shall not be taken into account, and the interested exporters shall be given not less than 60 days to reflect the long-term fluctuations in the rate of exchange within the period of investigation.

(11) amounts of adjustments.

The amount of adjustment shall be calculated on the basis of actual data concerning a certain anti-dumping investigation and the period of investigation, or actual data of the last financial year.

5. The margin of dumping shall be determined through comparison of the normal cost and the export price. The difference by which the normal value exceeds the export price shall be the amount of dumping margin.

6. Where the margins of dumping are different, the weighted average value of the margin of dumping may be calculated.

7. The presence of a margin of dumping shall be generally determined within the period of investigation by means of comparison of:

(1) a weighted average value of the normal cost with the weighted average value of export prices of all exporting operations in the importing country;

(2) or individual normal value with individual export prices in the importing country for each operation.

8. A weighted average value of the normal value may be compared to the prices of all individual export operations in the importing country provided that:

(1) structure of export prices is significantly different with different buyers, in various regions or within a certain period (periods);

(2) it is impossible to determine the actual value of a margin of dumping by methods, stipulated in parts six and seven and clause one of this part.

(clause 2 of part eight of Article 9 as amended
by the Law of Ukraine N 3027-IV of 1 November 2005)

9. When establishing a margin of dumping according to this Article, the methods of sampling, may be used according to Article 30 of this Law.

10. In the case where product is not imported directly from the country of origin but from the country of export, the export price of the product shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

(part ten was added to Article 9
according to the Law of Ukraine N 3027-IV of 1 November 2005)

Article 10. Procedure of Settlement and Determination of Damage

1. In the process of investigation the presence and the size of damage, caused to the national producer in one of the following forms, shall be established, unless otherwise stipulated by this Law:

(1) considerable damage, caused to the national producer;

(2) threat of infliction of considerable damage to the national producer;

(3) substantial impediment to the national producer in launching or expansion the production of similar goods subject to consideration.

2. Establishment of the presence of damage shall be based on evidence and involve an objective investigation of the following factors:

(1) volumes of the dumped imports and effect thereof upon the prices of similar products in the market of the importing country;

(2) the consequent impact of these imports on the national producer, which is a logical result of effect of the factors, specified in clause 1 of this Article.

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

As regards the impact of dumping imports on prices for the like products, the following issues shall be investigated:

(1) whether prices for goods that are the object of dumping imports were considerably below the prices than prices for the like products;

(clause 1 of part 3 of Article 10 is in the wording
of the Law of Ukraine N 252-VI of 10 April 2008)

(2) whether such dumping imports resulted in considerable decrease of prices for the like products;

(clause 2 of part 3 of Article 10 is in the wording
of the Law of Ukraine N 252-VI of 10 April 2008)

(3) whether such dumping imports hampered a possible considerable increase of prices for the like products that would otherwise have occurred.

(clause 3 of part 3 of Article 10 is in the wording
of the Law of Ukraine N 252-VI of 10 April 2008)

When the issue specified in clause one of part two of the present Article is investigated, more than one factor specified in this part of the Article shall be considered.

(part three of Article 10 is in the wording
of the Law of Ukraine N 3027-IV of 1 November 2005)

4. Where the imported goods from one or several countries simultaneously become a subject of anti-dumping investigations, the effect of such imports shall be collectively evaluated under the following conditions:

(1) the margin of dumping established in connection with the imports from each country exceeds the minimum level, defined in part four of Article 16 of this Law;

(2) the volume of imports from each country may not be defined as insignificant;

(3) a collective evaluation of the effects of imports meets the conditions of competition between imported goods and those between the imported goods and similar goods in the importing country.

5. The examination of the impact of the dumped imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact of a domestic producer being in the process of recovery from the effects of an earlier dumping or subsidization, the magnitude of the actual margin of dumping, actual and potential decline in sales, operating profits, market share, productivity, return on investments, utilization of capacities; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, economic growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

(paragraph ten of part five of Article 10 is in the wording
of the Law of Ukraine N 3027-IV of 1 November 2005,
as amended by the Law of Ukraine N 252-VI of 10 April 2008)

6. Damage, caused by the dumped imports, shall be proved in the process of investigation through providing corresponding evidence, which concern a certain anti-dumping investigation, and which are forwarded to the Ministry.

At the same time it is necessary to prove that the volumes and (or) levels of prices, specified in part three of this Article, cause to the national producer a consequence of impact stipulated in part five of this Article and that such consequence is substantial.

The proof of cause-and-effect relationship between dumped imports and the damage, caused to the national producer, shall be grounded on examination of all proofs, connected with the subject of an investigation, which are available with the Ministry.

7. The Ministry may investigate other known factors as well, the simultaneous effect of which causes damage to the national producer. The damage, caused due to the effect of these factors, shall not be deemed damage, caused by dumped imports. In this case the interested party may provide information as to one or several of the following factors:

(1) volumes and price of imported goods, subject to an investigation, which have not been sold at the dumped prices;

(2) contraction of the market or changes in the structure of consumption;

(3) introduction of trade restrictions and competition between the Ukrainian and foreign producers;

(4) development of technologies;

(5) the results of export activity and efficiency of productivity of the national producer.

8. The effect of the dumped imports shall be evaluated regarding the production of similar goods by the national producer when the existing evidence enable to compare this production on the basis of such criteria as production process, sales and producer's profits. If such comparison of this production is not practicable, the effects of the dumped imports shall be evaluated through examination of the production of a group or range of the most related goods which include similar goods, of which the necessary information can be provided.

9. A determination of a threat of material damage shall be based on facts. The circumstances, which shall bring to a situation in which the dumping would cause damage, should be clearly forecasted and inevitable.

10. The following factors shall be taken into account while determination of an availability of threat of substantial damage:

(paragraph one of part ten of Article 10 as amended
by the Law of Ukraine N 3027-IV of 1 November 2005)

(1) a significant rate of growth of dumped imports into the importing country which is an evidence of considerable growth of import volumes;

(2) sufficient export potential at the exporter's disposal or its inevitable and considerable growth, which is an evidence of a probable considerable growth of volumes of dumped exports in the importing country market with consideration of other export markets to which additional exports may be supplied;

(3) supply of imports into the importing country which may have a considerable effect, resulting in price-cutting or substantially prevent an increase in prices and cause a probable growth in demand for the new imports;

(4) inventories of goods of foreign origin, subject to an investigation.

11. When a decision is approved to the effect that further dumping imports to the importing country from the country of export (exporting countries) are imminent and would do serious injury unless preventive measures are applied, all factors mentioned in part ten of the present Article shall be considered in aggregate.

(part eleven of Article 10 is in the wording
of the Law of Ukraine N 3027-IV of 1 November 2005)

Article 11. Peculiarities of Definition of the National Producer

1. According to this Law a national producer is defined as a number of producers of similar goods or those of them, the aggregate production of which constitutes a major part of the whole production volume of these goods in the importing country with consideration of peculiarities, envisaged by this Article and part six of Article 12 of this Law. The following peculiarities shall be taken into consideration while defining a national producer:

(1) in case the producers of similar goods in the importing country are connected with the exporters or importers or they themselves are importers of goods which are deemed a subject of dumping, the rest of the producers, except for the above mentioned ones, may be regarded as national producers;

(2) in certain cases, the territory of the importing country may be divided into two or more competitive markets of production of similar goods and producers within each of these markets may be regarded as national producers under the following conditions:

- the producers within each of the specified markets sell all or a major part of the manufactured goods in this very market;
- producers from other areas of the importing country do not fully meet the demand for goods, subject to consideration, within each of such markets. Under such circumstances, the presence of damage, shall be proved even if this damage is not caused to most of enterprises, owned by the national producer on condition, the dumped imports are concentrated within such individual market and cause damage to the producers of all or most of enterprises, producing similar goods within such individual market.

2. The producers shall be considered connected with the exporters or importers under the presence of one (or several) of the following conditions:

(1) one of them directly or indirectly controls the other;

(2) both of them are directly or indirectly controlled by a the third person;

(3) together they directly or indirectly control a third producer, which affects the activity (inactivity) of such producers to that extend, that this activity (inactivity) differs from that of other producers, which are not connected with exporters, importers or producers, determined in clauses 1 and 2 of this part.

The producer (exporter, importer) may control another subject when he may legally or actually influence the latter, or exercise its administration

Chapter III
INITIATION OF ANTI-DUMPING PROCEDURE AND ANTI-DUMPING INVESTIGATION

Article 12. Initiation of an Anti-Dumping Procedure

1. An investigation aimed at identification of the presence and the impact of dumping which is stated to have taken place, as well as the amount of a margin of dumping shall be introduced by the Ministry through initiation of an anti-dumping procedure upon a complaint, submitted by a national producer or other person on his behalf, except case, envisaged by part eight of this Article.

The complaint shall be submitted in a written form by the applicant - the national producer, physical or legal person, acting on behalf of the national producer.

2. The complaint shall be submitted to the Ministry by a registered letter or delivered to the Ministry under a notice of receipt. The Ministry shall forward a copy of the complaint to the Commission to be examined by all its members.

The day, following the day of receipt and registration of the complaint with the Ministry shall be considered the first day of submission of the complaint.

3. Where the complaint has not been submitted directly to the Ministry according to the procedure, stipulated in part two of this Article, or when a corresponding body of executive power of the importing country has the relevant evidence of dumping and damage, the corresponding body shall immediately forward or submit the complaint to the Ministry. Trade unions of employees of the national producer's enterprises shall enjoy a similar right to filing a complaint to the Ministry according to the procedure, established by this Article.

4. The complaint, submitted by the applicant according to parts one-three of this Article, shall contain the evidence of the presence of dumping and damage that are stated to take place and a cause-and-effect relation between them. Particularly, the complaint shall include information, if it is or should be available with the applicant, as to:

(1) the applicant and composition of the applicant, proof of the relevant capability of such persons, the volumes and value of production of similar goods by the applicant in the importing country. Where the application is submitted on behalf of the national producer, this application shall specify:

- information on the national producer on behalf of which this complaint has been submitted, as well as on the volumes and value of similar goods produced by him in the importing country;
- list of all known national producers of similar goods (or associations of national producers of similar goods) and, if possible, of the volume and value of production of similar goods by these producers in the importing country.

(2) goods (including their full description), which are stated to be a subject of dumping, name of the country (countries) of origin or export, which is (are) a subject of the complaint.

(3) each generally known exporter or foreign producer and a list of known physical and legal persons, which perform importation of goods being a subject of the complaint;

(4) prices at which goods which are a subject of the complaint, are sold for consumption in the domestic market of the country (countries) of origin or export (or, where such information is available, prices at which the goods are sold from the country (countries) of origin or export to a third country or countries or on the established value of goods) and information on export prices, or prices at which the goods are first resold to an independent buyer in the importing country;

(5) volumes and dynamics of imports deemed dumped, effect of these imports on prices of similar goods in the importing country market, as well as consequence of such import, which is a result of effect of these two factors, for the national producer. This shall be confirmed by factors

and indicators affecting the state of the national producer, according to parts three and five of Article 10 of this Law.

5. Upon receipt of the complaint in accordance with the requirements of parts one - three of this Article, the Ministry shall initiate an anti-dumping procedure, in the process of which the evidence, provided in the complaint, shall be considered, in order to identify whether they are sufficient for initiation of an anti-dumping investigation according to part eleven of this Article.

6. According to parts one-three of this Article the investigation, shall be initiated provided the Ministry and the Commission determine that the complaint has been submitted by a national producer or other person on his behalf. The complaint shall be considered submitted by the national producer or other person on his behalf if it is backed by those Ukrainian producers, whose aggregate production constitutes more than 50 % of the total production volume of similar goods, produced by that part of national enterprises, which supports the complaint or expresses objections. However, no investigation shall be initiated, where the aggregate production with those producers, supporting the complaint, constitutes less than 25 % of the total volume of production of similar goods, manufactured by the national producer. In such case, where by the date of submission of the complaint to the Ministry this complaint is backed by those producers whose aggregate production constitutes 25 or more % (but less than 50 %) from the total production volume of similar goods, produced by the national producer, such an applicant within the anti-dumping procedure has to meet support (or direct or indirect objections) of other Ukrainian producers, in order to establish, prior to the date of initiation of an anti-dumping investigation, whether or not such application is backed by those producers, whose aggregate production constitutes more than 50 % of the total production volume of similar goods, manufactured by the national producer.

7. The Ministry and the Commission may not make public the information of the complaint to public before taking a decision on initiation of an anti-dumping investigation. Upon receipt of the complaint, documented in a proper way, and before initiation of an anti-dumping investigation, the Ministry, by order of the Commission, shall notify the corresponding competent bodies of the interested exporting country of the initiation of an anti-dumping procedure. The Ministry shall forward a confidential inquiry to the applicant on providing additional copies of a non-confidential version of the complaint within the established terms, for the purpose of their transference according to part thirteen of this Article.

8. The Commission may take decision on initiation of an investigation upon complaint, submitted according to part three of this Article, provided it contains sufficient evidence of dumping, damage and a cause-and-effect relation according to part four of this Article.

After adoption of the decision the Ministry shall start the specified investigation.

9. During an anti-dumping procedure, the Ministry shall simultaneously consider evidence of dumping and injury provided in the application, evaluate its adequacy and justification to determine whether there is sufficient evidence to justify the initiation of an investigation or the refusal to initiate such an investigation.

If during an anti-dumping procedure the Ministry should establish that the evidence of dumping, injury or a causal link between dumping and injury is not sufficient to justify the initiation of an anti-dumping investigation, in particular, that the actual or potential volume of dumping imports from the exporting country is negligible or the dumping margin is considered to be *de minimis*, the Ministry shall recommend that the Commission should not initiate an anti-dumping investigation and that the Commission should reject the application filed by the applicant in accordance with parts one – three of the present Article.

The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 % of the export price.

Actual or potential volume of dumping imports from the exporting country shall normally be regarded as negligible if the volume of dumped imports is found to account for less than 3 % of imports of the product under investigation in the importing country, unless exporting countries which individually account for less than 3 % of dumping imports of the product under investigation

in the importing country collectively account for more than 7 % of dumping imports of the product under investigation in the importing country.

(part nine of Article 12 is in the wording of the Law of Ukraine N 3027-IV of 1 November 2005)

10. During an anti-dumping procedure, the applicant shall have the right to recall the application before the initiation of an anti-dumping investigation. In this instance, the anti-dumping procedure shall be terminated, whereas the application shall be regarded as if it had not been submitted, except for cases when termination of the anti-dumping procedure contradicts national interests.

(part ten of Article 12 is in the wording of the Law of Ukraine N 3027-IV of 1 November 2005)

11. The Ministry shall forward to the Commission a report on the results of conducting the anti-dumping procedure. The Commission shall take a decision on initiation of an anti-dumping investigation upon representation of the Ministry, generally within the period of 30 days from the date of submission of the complaint. This decision shall be taken on the basis of evidence, substantiated by actual data of an anti-dumping procedure. The Commission in its decision on the initiation of an investigation shall authorize the Ministry to:

(1) immediately to start an anti-dumping investigation;

(2) publish information on initiation of an investigation in the publishing body of the Cabinet of Ministers of Ukraine (hereinafter - the newspaper).

Where the Commission makes a decision to terminate the anti-dumping procedure upon representation of the Ministry because of insufficiency of evidence for substantiation of the complaint, the Commission shall authorize the Ministry to notify the applicant of such decision within 45 days from the date of filing the complaint with the Ministry.

12. A notification on the initiation of an anti-dumping investigation shall contain:

(1) information on the initiation of an anti-dumping investigation;

(2) determination of goods subject to an investigation and determination of the interested countries;

(3) brief statement (hereinafter - summary) on information, received by the Ministry;

(4) a reference, that all information which may be useful for the investigation should be forwarded to the Ministry;

(5) terms within the frames of which:

- other parties to antidumping investigation can notify the Ministry of their concern in an anti-dumping investigation, and provide written comments pursuant to such anti-dumping investigation or other required information. The abovementioned comments and other information shall be accounted by the Ministry during the anti-dumping investigation, provided they have been filed with the Ministry within the terms, established in the notification;
- interested parties have a right to demand the hearings to be held at the Ministry according to part six of Article 13 of this Law.

13. The Ministry shall notify the exporters, importers, the known unions (associations) of importers or exporters, competent bodies of the exporting country and the applicants of initiation of an anti-dumping investigation. In accordance with the requirements of this Law as to protection of confidential information, the Ministry may provide the known exporters, competent bodies of the exporting country and other interested parties upon their request with a full text of the written complaint. Should the parties of an anti-dumping investigation be proved considerable in number, the Ministry shall forward the full text of the written complaint to the competent bodies of the exporting country only.

14. Conducting of an anti-dumping investigation shall not create impediments to the customs legalization of goods, subject to an investigation.

Article 13. Anti-Dumping Investigation

1. According to the decision of the Commission the Ministry shall initiate an anti-dumping investigation and perform such investigation together with other bodies of executive power of the importing country.

2. The aim of an anti-dumping investigation is to determine the presence of dumping and the damage. The usual term of an investigation is up to one year, but not less than six months, immediately preceding the initiation of an anti-dumping procedure. In exclusive circumstances this term may exceed one year. Any information, not related to the period of investigation is generally not taken into consideration.

The Ministry shall establish the terms of an investigation.

3. The Ministry is entitled to send questionnaires to the known exporters, importers, other parties of the antidumping investigation deemed relevant or to competent bodies of an exporting country in order to obtain information and evidence to be used in the antidumping investigation. Replies to the questionnaire shall be sent to the Ministry within 30 days upon its receipt. The questionnaire is considered to be received one week upon the date of its sending to the respondent or submitting to a respective diplomatic representative of the exporting country.

The period for providing the reply may be extended by the Ministry taking into consideration the time limit set for a particular investigation and upon condition that the party in question will substantiate the need for such an extension.

The Ministry is entitled to request the parties involved to submit information and evidence needed for an antidumping investigation. Such a request is binding for parties involved and reply shall be provided within a time period set by the Ministry.

(part 3 of Article 13 is in the wording
of the Law of Ukraine N 252-VI of 10 April 2008)

4. The Ministry is entitled to obtain from the bodies of executive power of the importing country all the necessary information, documents or materials for conducting the anti-dumping investigation. The Ministry, on demand of a member of the Commission, shall forward to this member or to the Commission a non-confidential summary of information, obtained from the specified bodies.

5. While performing an anti-dumping investigation the Ministry shall have the right to:

(1) authorize other bodies of executive power of the importing country to undertake inspections or control of the activity of the importers, traders and Ukrainian producers for the purpose of execution the Commission's decisions;

(2) carry out in other countries verification of information, received from the interested parties, by consent of the corresponding interested party and in the absence of objections from the officially informed competent bodies of the interested country.

For this purpose the Ministry shall specify the terms and methods of performance of such supervision and verifications. The bodies of executive power of the importing country shall take all the necessary measures for satisfaction of such requirements. The authorized representatives of the Ministry may participate in the specified verifications and supervision.

6. The interested parties that have notified the Ministry of their concern according to part twelve of Article 12 of this Law shall have the right to apply to the Ministry with the demand to arrange hearings dedicated to the issues of an anti-dumping investigation, provided:

(1) they demanded an arrangement of the hearings in a written form within the terms, established in the newspaper announcement on initiation of an anti-dumping investigation;

(2) they have proved to be the interested parties that may be affected by consequences of an anti-dumping investigation;

(3) there are special reasons for arrangement of the stipulated hearings.

7. On demand of the interested parties which have notified the Ministry of their concern in participation in the investigation according to part twelve of Article 12 of this Law, the Ministry shall provide these interested parties upon their demand with an opportunity to conduct consultations with the party which has filed the corresponding complaint or pursues opposite interests. These consultations shall be carried out with the strict observance of confidential treatment while providing information.

Surrender of participation in consultations by parties of an anti-dumping investigation shall involve no negative consequences.

Information provided verbally to the interested parties according to parts seven and eight of this Article, shall be taken into account by the Ministry in the process of an anti-dumping investigation only under condition it has been submitted in writing.

8. The applicants and the interested parties which have notified the Ministry of their concern according to part twelve of Article 12 of this Law, as well as competent bodies of the exporting country, may, upon their written demand, familiarize themselves with any information, provided by an interested party, except for confidential official documents of the Ministry and the Commission, where such information is:

(1) related to the protection of their interests;

(2) not confidential according to Article 32 of this Law;

(3) used in the anti-dumping investigation.

The interested parties may give their comments as to this information, which shall be taken into consideration by the Ministry in the process of an anti-dumping investigation, provided these comments are sufficiently grounded.

9. Any information, provided by the interested parties, on the basis of which a positive or negative conclusion as to the presence of dumping and the damage shall be made, is subjected to the Ministry's verification with the exception of circumstances, stipulated in Article 31 of this Law.

Information and evidence, supplied to the Ministry by one of the interested parties during an anti-dumping investigation, shall be forwarded by this interested party to all other interested parties. In case this information and evidence are not forwarded to the Ministry or to the interested parties or if they cannot be verified, such information and evidence shall not be taken into consideration by the Ministry in the process of an anti-dumping investigation.

10. The period of an anti-dumping investigation shall not exceed one year from the date when the decision to initiate such an investigation took effect.

(paragraph one of part ten of Article 13 is in the wording of the Law of Ukraine N 3027-IV of 1 November 2005)

The Commission, by a relevant decision, may prolong the term of an investigation, however this term shall not exceed 18 months.

(paragraph two of part ten of Article 13 as amended by the Law of Ukraine N 3027-IV of 1 November 2005)

Chapter IV
ANTI-DUMPING MEASURES

Article 14. Provisional Anti-Dumping Measures

1. Provisional anti-dumping measures may be taken under the following conditions:

(1) initiation of an anti-dumping procedure in accordance with the procedure, established by Article 12 of this Law;

(2) initiation of an anti-dumping investigation in accordance with the procedure, established by Article 13 of this Law;

(3) publication of notification on initiation of an anti-dumping investigation in the newspaper;

(4) the interested parties have been provided with a corresponding opportunity to submit information and comments according to part twelve of Article 12 of this Law;

(5) in the course of an anti-dumping investigation the Ministry has made a preliminary positive conclusion on the presence of dumping and damage, that is a consequence of such dumping;

(6) the national interests require application of the provisional anti-dumping measures in order to prevent the threat of damage;

2. The provisional anti-dumping measures shall be applied upon the Commission's decision not earlier than after 60 days and not later than nine months from the date of initiation of the corresponding anti-dumping investigation.

3. In case the exporters, importers and producers of goods, subject to an anti-dumping investigation, refuse the Ministry's verification of information according to articles 7-9, parts five and nine of Article 13 and Article 29 of this Law, not later than within 75 days from the date of initiation of the corresponding anti-dumping investigation it shall be determined, whether the provided information is sufficiently grounded for the preliminary conclusion as to the presence of dumping and the damage.

Not later than 10 days prior to the possible date of application of the provisional anti-dumping measures, the Ministry may inform the interested parties of its grounds that in the opinion of the Ministry necessitate submission of the proposal on application of the said measures to be considered by the Commission. The interested parties may forward to the Ministry their comments on this matter. The Ministry shall consider the commentaries of the interested parties, provided they were submitted to the Ministry not later than 5 days prior to the date of taking decision by the Commission on application of the provisional anti-dumping measures. The reasons for non-acceptance of the comments for consideration shall be stipulated in the corresponding decision of the Commission.

In this case, the Commission, on the grounds of the specified proposals of the Ministry may take decision on application of the provisional anti-dumping measures not later than 90 days since the date of initiation of an anti-dumping investigation.

4. Where importation of goods with a short-term product cycle into the importing country is an object of an anti-dumping investigation, or in case the Ministry refuses to perform verifications, specified in part three of this Article, the Ministry, not later than 60 days after the date of initiation of the corresponding anti-dumping investigation, shall determine whether the provided information is sufficiently grounded for making a preliminary conclusion as to the presence of dumping and the damage. Such conclusions shall be made not later than 75 days after the date of initiation of an anti-dumping investigation.

5. If a member of the Commission demands the immediate application of the provisional anti-dumping measures according to the requirements of parts one and two of this Article, the Ministry shall:

(1) make preliminary conclusions as to the presence of dumping and the damage as well as on the expediency of application of the provisional anti-dumping measures not later than on the tenth workday after reception of the properly issued demand of a member of the Commission;

(2) inform the interested parties and the Commission of these conclusions and suggest the date of conducting a Commission's meeting on this issue.

6. Before completion of an anti-dumping investigation the Ministry shall establish the sufficiency of evidence, provided by the applicants, interested parties and bodies of executive power of the importing country as to the presence of dumping and the damage and expediency of application of provisional anti-dumping measures. The Ministry shall inform the Commission on the content of these conclusions.

Not later than 10 days before the possible date of application of the provisional anti-dumping measures, the Ministry may inform the interested parties of its grounds that in the opinion of the Ministry necessitate submission of the proposal on application of the said measures to be considered by the Commission. The interested parties may submit their comments on this matter to the Ministry. The Ministry shall consider the comments of the interested parties under condition they were submitted to the Ministry not later than 5 days prior to the date of making decision by the Commission on application of the provisional anti-dumping measures. The reasons for non-acceptance of the comments for consideration shall be stipulated in the corresponding decision of the Commission.

On the basis of the said proposals of the Ministry the Commission may take decision on application of the provisional anti-dumping measures not later than nine months after the date of initiation of an anti-dumping investigation.

7. Conclusions of the Ministry as to rejection of the provisional antidumping measures do not exclude taking a decision by the Commission as to application of the specified measures in the following cases:

(1) upon a grounded request of a member of the Commission; or

(2) upon a grounded request of an interested national producer; or

(3) on initiative of the Ministry in case of identification of a new evidence of the presence of dumping and the damage.

8. The provisional anti-dumping measures may be applied through an introduction of collecting a preliminary anti-dumping duty. The rate of the anti-dumping duty shall be established by a corresponding resolution of the Commission.

The rate of the provisional anti-dumping duty shall be established:

- in percentage of the customs value of goods subject to an anti-dumping investigation. The customs value of these goods shall be calculated in accordance with the basic terms of delivery CIF the importing country border; or
- as a difference between the minimum value and customs value of the specified goods, calculated in accordance with the basic terms of delivery CIF the importing country border;

Minimum price is a selling price of the specified goods that shall not cause damage to the national producer. The minimum value shall be calculated by the Ministry according to part nine of this Article.

9. The procedure of calculation of minimum price is as follows:

(1) The Ministry shall calculate the price of goods, subject to an anti-dumping investigation, which was practiced in the market of the importing country within the basic period. The Ministry

shall calculate the weighted average value for the basic period on the grounds of weekly or monthly prices. The Ministry shall only once fulfill these calculations using the relevant information provided by the Service, the applicant or the interested party, or the corresponding information received from other sources. The basic period is the period from six months to five years preceding the period of an investigation;

(2) The Ministry shall establish the actual current market price of goods, subject to an anti-dumping investigation, that was practiced in the market of the importing country in the specified period of investigation, within the anti-dumping investigation and the period of application of the provisional measures within the four last weeks preceding the 25th day of each month;

(3) The Ministry shall calculate the variable value in percentage that shall be equal to a difference between prices, determined in clauses 1 and 2 of this part, divided by the price of goods that was practiced in the market of the importing country within the basic period;

(4) The Ministry shall establish a price of goods, manufactured by the national producer, within the basic period with the use of information, received from such producer and (or) from other sources in the process of an anti-dumping investigation;

(5) adjustment in price of goods of the national producer shall be defined as a variable value in %, calculated according to clause 3 of this part, multiplied by the price value of goods of the national producer, calculated according to clause 4 of this part;

(6) the minimum price for the next month shall be established by means of increase in the price of goods of the national producer for the basic period by the amount of the specified adjustment;

(7) the Ministry shall calculate the minimum price on the grounds of the data available by the 25th day of each month;

(8) the Ministry shall provide the Service with information on the minimum price not later than on 1 day of each month;

(9) the minimum price established according to this part shall be valid during the whole period of application of the provisional anti-dumping measures;

(10) where the minimum price is calculated for a five year period, the Ministry shall use the method of calculation of the minimum price, stipulated in claues1-9 of this part, with the adjustment of the required data for a five year period of application of the provisional anti-dumping measures.

10. The provisional anti-dumping duty shall be paid in a cash or non-cash form or through remitting a duty amount to a deposit account, or through a relevant debt commitment, unless otherwise is stipulated by Ukrainian legislation.

11. The rate of a provisional anti-dumping duty shall not exceed the preliminarily calculated amount of a margin of dumping and may be lower than the amount of such margin on condition the duty rate is sufficient to prevent the damage, caused to the national producer.

(paragraph one of part eleven of Article 14 as amended
by the Law of Ukraine N 3027-IV of 1 November 2005)

The provisional anti-dumping duty shall be charged in a relevant size and in each individual case on a non-discriminatory basis, irrespective of the country of export, if the Commission establishes by its decision that importation of the corresponding goods is subject to application of the provisional anti-dumping measures.

The Commission in the abovementioned decision shall identify each supplier of goods importation of which into the importing country is subject to application of the provisional anti-dumping measures. Where an anti-dumping investigation is performed with respect to goods, imported by several suppliers from the same country and all these suppliers cannot be identified, the decision of the Commission shall specify the exporting country. If an anti-dumping

investigation is directed at goods, imported by several suppliers from more than one country, the Commission in its decision shall identify either all suppliers or, where it is impossible, all exporting countries.

In its decision the Commission shall establish the rate of a preliminary anti-dumping duty, imposed on the goods of each supplier (producer, exporter, and importer), importation of which into the importing country market subject to application of anti-dumping measures, and where it is impossible to identify all suppliers of such products - all exporting countries shall be identified.

12. The customs bodies of the importing country shall charge the preliminary anti-dumping duty at the rate and under the terms, established by a corresponding decision on application of the provisional anti-dumping measures. A provisional anti-dumping duty shall be imposed irrespective of the payment of other taxes and fees (compulsory payments), including duty charged while importing certain types of products into the customs territory of the importing country.

(part eleven of Article 14 is amended pursuant to Law of Ukraine of 13 March 2012 N 4496-VI)

13. The provisional anti-dumping measures shall be applied within a four months period. The Commission may extend this term by two more months, however the total term of application of the provisional measures shall not exceed six months. The term of application of the provisional anti-dumping measures shall be extended to six months in those cases, when the exporters performing a considerable number of trade operations, subject to an investigation, submit to the Ministry request on extension of the term of application of the provisional measures or do not object to the prolongation of this term.

A decision on prolongation of the term of application of provisional measures shall be made upon proposal of the Ministry at the meeting of the Commission by a qualified majority of vote.

14. The Ministry, by order of the Commission, shall notify the Cabinet of Ministers of Ukraine of decisions, made according to this Article.

15. The application of the provisional anti-dumping measures should not create impediments to the customs legalization of goods, subject to an anti-dumping investigation.

Article 15. Obligations of Interested Parties

1. The anti-dumping investigation may be terminated without charging the provisional or definitive anti-dumping measures, if:

(1) the Commission made a decision on application of provisional anti-dumping measures;

(2) the Ministry received from the exporter a satisfactory voluntary written obligation to reconsider his prices or terminate exporting of goods at dumped prices, into the region of the importing country subject to an investigation, so that to assure the Ministry and the Commission that the effect of such dumping, causing the damage, shall be liquidated;

(3) the Ministry files to the Commission the exporter's obligations together with the relevant proposals;

(4) The Commission has taken decision to accept the exporter's obligations. The increase in prices pursuant to the exporter's obligations to discontinue the dumped imports:

- shall not exceed the rate, required for the elimination of the margin of dumping;
- but may be less than the value of the margin of dumping, where the specified increase is sufficient for the liquidation of damage, caused to the national producer by the dumped imports.

Where the national producer determines the aggregate number of the producers of a certain region according to part one and two of Article 11 of this Law, the exporters shall be given an opportunity to offer their obligations as to importation of their products to the corresponding markets according to this Article. In such a case the regional interests shall be taken into account

as well, provided the Commission establishes that application of the provisional anti-dumping measures meets the national interests.

2. Where the above mentioned obligation is not sufficient for removing the consequences of the dumping, or it is not offered within 60 days from the date of the Commission's decision-making on collecting of preliminary anti-dumping duty, or if the circumstances, stipulated in parts nine and ten of this Article take place, the Commission shall make a relevant decision on collecting of preliminary or definitive anti-dumping duty within the whole territory of the importing country. In such cases the Commission by a relevant decision shall identify the producers or exporters, established in the process of an anti-dumping investigation, from imported goods of which the anti-dumping duty shall be collected.

If the exporters do not propose obligations as to termination of the dumped importations, or disagree with those of the Ministry, this in no way shall influence the anti-dumping investigation. However the Ministry may establish that a threat of the damage is more probable in case of continuation of dumped imports.

The Ministry or the exporters shall propose their obligations as to termination of dumped imports, where the preliminary conclusions of the Commission provide for the presence of dumping and damage, caused by this dumping.

Obligations shall not be proposed after expiration of the term, envisaged by part five of Article 33 of this Law, unless it is determined by force-majeure circumstances.

3. The exporters' obligations to terminate dumped imports shall not be accepted, if the Ministry considers them unacceptable, particularly, where the number of actual or potential exporters is substantial, or due to other reasons, including protection of the national interests of the importing country.

Not later than 15 days prior to expiration of the term of application of the provisional anti-dumping measures, an interested exporter may be notified of the grounds that in the opinion of the Ministry necessitate submission of proposal on rejection of the offered obligations to be considered by the Commission. Such exporter may submit to the Ministry his comments on this matter, which shall be considered by the Ministry, if provided to the Ministry not later than 10 days prior to expiration of the term of application of the provisional anti-dumping measures.

The final decision of the Commission shall provide for the reasons of non-acceptance of the exporter's comments to be taken into account.

4. The exporters, proposing obligations to discontinue the dumped imports, shall submit to the Ministry a non-confidential version of such obligation, which may be transferred by the Ministry to other interested parties.

5. Where after consultations between the Ministry and the interested parties the exporters assume obligations to terminate the dumped imports, the Ministry shall approve the preliminary conclusions as to termination of an anti-dumping investigation and submit to the Commission a report on the results of such consultations with the proposal to the Commission to take a decision on termination of an anti-dumping investigation.

The decision of the Commission on acceptance of the exporters' obligations to terminate dumped imports and the decision on termination of the anti-dumping investigation shall be taken by a qualified majority of vote within one month from the date of making conclusions of the Ministry on termination of the anti-dumping investigation. The anti-dumping investigation shall be deemed terminated, where the Commission did not approve any other decision within one month from the date of submission of the said report by the Ministry.

In case the Ministry does not make a decision on termination of the anti-dumping investigation, the Ministry shall immediately forward to the Commission a detailed report on the results of the conducted consultations with a proposal to apply the anti-dumping measures.

6. In case the exporter's obligations to terminate the dumped imports are accepted by the Commission, the Ministry, shall generally, continue the anti-dumping investigation for the purpose

of its termination. Where the Ministry makes a negative conclusion as to the presence of dumping or the damage, the obligation shall lose its validity, except cases, when the specified conclusion to a considerable degree is a result of fulfillment of obligations as to termination of dumped imports. In such cases the Ministry may demand that the obligations be valid during the term, required for the liquidation of consequences of the dumped imports.

Provided the Ministry makes a positive conclusion as to the presence of dumping and the damage, the exporter's obligation to discontinue the dumped imports shall be in effect according to the relevant Commission's decision.

The Ministry shall immediately submit to the Commission a report on the decisions, made pursuant to the provisions of this part. The Commission at its meeting may approve another decision by a qualified majority of vote.

7. The Ministry is entitled to demand from the exporter, which assumed an obligation to discontinue dumped imports, periodical reports on performing the said obligation, as well as permission for conducting a verification of information, concerning the fulfillment of such obligation. The exporter's refusal to fulfill these requirements shall be deemed a violation of obligations.

8. If the exporter's obligations to terminate dumped imports are accepted in the process of an anti-dumping investigation, such obligations shall enter into force on the date of termination of the relevant anti-dumping investigation.

9. In case the Ministry identifies the facts of violation or cancellation by the exporter of assumed obligations to terminate dumped imports, the Ministry shall prepare a report with proposals on application of the corresponding anti-dumping measures and submit it to the Commission to be considered. The Commission at its meeting shall consider this report and according to Article 16 of this Law may take decision by a simple majority of vote on collecting of a definitive anti-dumping duty on the grounds of facts, established in the process of an anti-dumping investigation, during which the exporter assumed obligations to terminate dumped imports. The decision on application of the definitive anti-dumping measures shall be taken, if:

(1) according to the results of an anti-dumping investigation, a fact of the presence of dumping and the damage is ultimately established by the Commission;

(2) the interested exporter, except cases of the exporter's cancellation of his obligations, shall have an opportunity to submit to the Ministry his comments which may be taken into account while considering this matter at the meeting of the Commission.

10. The Commission at its meetings shall review the report of the Ministry and other provided information, on the grounds of which may take decision on immediate application of the provisional anti-dumping measures according to Article 14 of this Law:

(1) if there are reasons to consider that the exporter violates his obligations to discontinue dumped imports;

(2) or the exporter violates or cancels his obligations to discontinue dumped imports where an anti-dumping investigation, in the process of which such obligations were accepted, has not been terminated.

The decision of the Commission on immediate application of the provisional ant-dumping measures shall be taken by a simple majority of vote.

Article 16. The Procedure for Terminating an Anti-Dumping Procedure or an Anti-Dumping Investigation without Application of Anti-Dumping Measures Application of Final Anti-Dumping Measures

(the title of Article 16 is in the wording
of the Law of Ukraine N 3027-IV of 1November 2005)

1. Part one of Article 16 is deleted.

(according to the Law of Ukraine
N 3027-IV of 1 November 2005)

2. If application of the anti-dumping measures is unnecessary and refusal thereof is not opposed by the members of the Commission, the Commission, upon proposal of the Ministry, shall terminate the anti-dumping procedure or the anti-dumping investigation without application of the anti-dumping measures. The said decision shall be made by a qualified majority of vote.

3. According to part two of this Article, the Ministry shall prepare a report and notify the representatives of the country of origin and (or) the exporting country and publish a relevant announcement in the newspaper, in which the basic conclusions and a summary of reasons for termination of an anti-dumping procedure or an anti-dumping procedure shall be stated without application of the anti-dumping measures.

4. If during an anti-dumping investigation a conclusion is approved to the effect that the evidence of dumping, injury or a causal link between dumping and injury is not sufficient to justify the continuation of an anti-dumping investigation, in particular, that the actual or potential volume of dumping imports from the exporting country is not significant or the margin of dumping is considered to be *de minimis*, upon the Ministry's suggestion the Commission shall make a decision on terminating such an anti-dumping investigation without the application of anti-dumping measures.

The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 % of the export price.

Actual or potential volume of dumping imports from the exporting country shall normally be regarded as negligible if the volume of dumped imports is found to account for less than 3 % of imports of the product under investigation in the importing country, unless exporting countries which individually account for less than 3 % of dumping imports of the product under investigation in the importing country collectively account for more than 7 % of dumping imports of the product under investigation in the importing country.

If during an anti-dumping investigation the Ministry should establish that the margin of dumping for individual exporters is less than 2 % of the export price, there shall be immediate termination of an anti-dumping investigation by the Commission upon the Ministry's suggestion without the application of anti-dumping measures against such exporters. These individual exporters shall continue to be subject to an anti-dumping procedure and may become subject to a new anti-dumping investigation in the course of the further revision of anti-dumping measures that is carried out according to Chapter V of the present Law.

(part four of Article 16 is in the wording
of the Law of Ukraine N 3027-IV of 1 November 2005)

5. Generally an anti-dumping investigation shall terminate in accordance with the decision of the Commission on application of the definitive anti-dumping measures. The definitive anti-dumping measures shall be applied under the following principles:

(1) where the Ministry has made the ultimate positive conclusion as to the presence of dumping and the damage which is a consequence of this dumping, and where the national interests require the anti-dumping measures to be applied according to Article 36 of this Law;

(2) while applying the provisional anti-dumping measures the Ministry shall forward to the Commission a proposal on application of the definitive anti-dumping measures one month prior to

expiration of the term of application of the specified provisional measures;

(3) on proposal of the Ministry the Commission shall take decision on collection of the definitive anti-dumping duty and establish the rate of this duty, that shall not exceed the value of a margin of dumping, calculated according to this Law, and may be less than the value of such margin, provided this rate is sufficient to prevent the damage, caused to the national producer;

(clause 3 of part five of Article 16 as amended by the Law of Ukraine N 3027-IV of 1 November 2005)

(4) The rate of the definitive anti-dumping duty shall be established:

- in percentage of the customs value of goods subject to an anti-dumping investigation. The customs duty of these goods shall be calculated in accordance with the basic terms of delivery CIF the importing country border; or
- as a difference between the minimum price and customs value of the specified goods, calculated in accordance with the basic terms of delivery CIF the importing country boarder. In this case the minimum value for a five-year term shall be calculated according to part nine of Article 14 of this Law.

6. The definitive anti-dumping duty shall be collected in the relevant amount in each case individually and on a non-discriminatory basis, irrespective of the exporting country, provided the Commission has established by its decision that importation of the relevant goods is subject to application of the definitive anti-dumping measures, except imports, with respect to which the exporter assumed the corresponding obligations according to this Law.

In the said decision the Commission shall identify each supplier of goods, importation of which into the importing country is subject to application of the definitive anti-dumping measures. Where an anti-dumping investigation is carried out with respect to goods, being imported by several suppliers from the same country and it is impossible to identify all these suppliers, this exporting country shall be specified in the Commission's decision. If an anti-dumping investigation is carried out with respect to goods, which are imported by several suppliers from more than one country, the Commission's decision shall determine either all the suppliers or, where it is impossible to establish all the suppliers, - all exporting countries.

The Commission in its decision shall establish the rate of the definitive anti-dumping duty, charged upon the goods of the supplier (producer, exporter, importer), importation of which into the importing country is subject to application of the anti-dumping measures. Where it is impossible to identify a supplier (producer, exporter, and importer) of such goods, a rate of the definitive anti-dumping duty for the exporting country shall be established in the decision.

7. If in the process of an anti-dumping investigation the Ministry uses selective methods, envisaged by the Article 30 of this Law, an antidumping duty collected of the imports into the importing country, which is performed directly by the exporters or producers who have notified the Ministry of their concern according to Article 30 of this Law, shall not exceed a weighted average value of a margin of dumping, established for the comparable exporters or producers. According to this part the Ministry shall not consider zero and insignificant values of dumping margin, as well as values, calculated in cases, stipulated in Article 31 of this Law. The individual rates of an anti-dumping duty shall be used in cases of direct importation to the importing country of goods by the exporters or producers, with respect to the imports of which the selective methods of an anti-dumping investigation are applied according to Article 30 of this Law.

8. A definitive anti-dumping duty shall be paid at the rate and terms, established in the relevant decision of the Commission on application of the definitive anti-dumping measures. A definitive anti-dumping duty shall be paid regardless of payment of other taxes and fees (compulsory payments), including duty, which are generally collected during importation of the goods in the importing country.

(part eight of Article 16 is amended pursuant to Law of Ukraine of 13 March 2012 N 4496-VI)

Article 17. Peculiarities in Application of Anti-Dumping Measures

1. The provisional and the definitive anti-dumping measures shall be applied to goods, imported into the customs territory of the importing country, after the date of entry into force the relevant Commission's decision on application of such measures, except cases, determined by this Law.

2. In the case where a provisional anti-dumping duty has already been imposed and the Ministry should finally establish the presence of dumping and injury, upon the Ministry's proposal the Commission may approve a decision to specify the rate of such a provisional anti-dumping duty, irrespective of whether or not it will decide to apply the final anti-dumping duty.

(paragraph one of part two of Article 17 is in the wording of the Law of Ukraine N 3027-IV of 1 November 2005)

The following shall not be taken into consideration while establishing a fact of the damage:

(1) sufficient impediment to creation or expansion of the national production of goods subject to an investigation;

(2) a threat of infliction of sufficient damage, except those cases, where the Ministry establishes, that a threat of infliction of sufficient damage shall develop into considerable damage, unless the provisional anti-dumping measures are applied.

In all other cases where a threat of infliction a sufficient damage is present or here is impediment to creation or expansion of the national production of goods, subject to an investigation, a preliminary anti-dumping duty shall not be collected and the definitive anti-dumping duty shall be charged after the date of ultimate establishment of a threat of substantial damage or considerable impediment to the creation or expansion of the national production of goods, subject to an investigation.

3. In case the rate of the definitive anti-dumping duty is higher than that of the preliminary anti-dumping duty, the supplier shall not pay the difference between these rates. If the rate of the definitive anti-dumping duty is lower than rate of the preliminary anti-dumping duty, such difference between these rates shall be refunded to the supplier (producer, exporter, and importer). Should the Commission make an ultimate negative conclusion as to the presence of dumping (damage), the amount of the preliminary anti-dumping duty, paid or remitted to a deposit account of the preliminary anti-dumping duty, shall be refunded to the supplier (producer, exporter, importer) and the debt commitment shall be cancelled.

4. The definitive anti-dumping duty may be collected from goods, declared for shipment to the customer, within 90 days before the date of application of the provisional anti-dumping measures, but not earlier than 60 days before the date of initiation of an anti-dumping investigation, under the following circumstances:

(1) importation of the aforementioned goods into the importing country has been carried out under the contracts, registered according to part four of Article 28 of this Law;

(2) the Ministry provided the importers with an opportunity to submit their comments;

(3) the Ministry has established that:

- the specified goods have been a subject of dumping for a long period of time in the past or an importer was or should have been aware of the existence of dumping, its size and (or) damage, which is stated to have taken place, and which has been established in the process of an anti-dumping investigation;
- besides the imports that cause damage and which have been carried out within the period of an investigation, a new substantial growth in the volumes of imports took place, that, taking into account the specific period of its fulfillment, as well as the volume and other circumstances (particularly, fast increase of inventories of the imported goods), may neutralize the effect of the definitive anti-dumping duty, collected of such imports.

5. In case of violation or cancellation of exporter's obligations to discontinue the dumped imports, a collection of the definitive anti-dumping duty from goods may be introduced 90 days prior to the date of application of the provisional anti-dumping measures, but not earlier than the date of initiation of the corresponding anti-dumping investigation under the presence of the following circumstances:

(1) importation of the specified goods into the importing country has been carried out under the contracts, registered according to part four of Article 28 of this Law;

(2) application of the anti-dumping measures according to this part does not apply to the imports, entered prior to violation or cancellation by the exporter of his obligations to terminate the dumped imports.

Chapter V

TERM OF VALIDITY OF ANTI-DUMPING MEASURES, THEIR RECONSIDERATION, RESUMPTION OF ANTI-DUMPING INVESTIGATION AND REFUND OF THE PAID AMOUNTS OF ANTI-DUMPING DUTY

Article 18. Term of Validity of Anti-Dumping Measures and General Provisions of their Reconsideration

1. The anti-dumping measures shall be applied pursuant to the corresponding decision of the Commission within the terms and in the amount, sufficient for liquidation of dumping, causing the damage.

2. A decision on application of anti-dumping measures shall lose its validity not later than after five years from the date of their application or from the date of the latest decision of the Commission on reconsideration of anti-dumping measures, the result of which was establishment of the fact of the presence of dumping and the damage, provided in the process of such consideration the Commission has not established, that expiry of the force of anti-dumping measures would facilitate the practice or resumption of dumping and cause damage.

3. The requirements of articles 12 and 13 of this Law, with the exception of terms, determined by these Articles, shall extend to the procedure of reconsideration of anti-dumping measures, which shall be completed according to Articles 18 - 23 of this Law.

4. Reconsideration of the anti-dumping measures shall be performed within undertime, and generally not later than twelve months from the date of initiation of such reconsideration.

5. The Ministry shall fulfill the reconsideration of the anti-dumping measures according to the relevant decisions of the Commission.

6. Where in the process of reconsideration of the anti-dumping measures the Ministry makes a positive or negative conclusion as to the presence of dumping and (or) damage, the Ministry shall prepare a report with the relevant proposals and submit it to the Commission. On the grounds of this report the Commission may make one of the following decisions:

(1) cancel or continue the anti-dumping measures according to Article 19 of this Law;

(2) cancel, continue or change the anti-dumping measures according to articles 20 and 21 of this Law.

7. If the decision to cancel the anti-dumping measures is made only with respect to individual exporters, and not the aggregate number of countries, such exporters shall remain the subjects of the said anti-dumping procedure and may be subject to a new anti-dumping investigation in case of initiation of the next reconsideration of anti-dumping measures in accordance with the provisions of this chapter.

8. If according to Article 20 of this Law a reconsideration of the anti-dumping measures is carried out at the end of the term of application of anti-dumping measures, specified in Article 19

of this Law, such anti-dumping measures shall be reconsidered as well, according to Article 19 of this Law.

Article 19. Reconsideration of Anti-Dumping Measures due to Expiry of their Application

1. Within the first half of the last year of application of the anti-dumping measures the Ministry shall publish a notice in the newspaper on the date of expiry of application of such measures.

2. Reconsideration of the anti-dumping measures due to expiry of their application shall be initiated on demand of the national producer or that of a body of executive power of the importing country. The anti-dumping measures shall be valid until the Commission makes a corresponding decision under the results of this reconsideration.

3. Not later than three months prior to ending of the five-year term of application of anti-dumping measures the national producer or bodies of executive power of the importing country may submit to the Ministry a demand on reconsideration of the anti-dumping measures due to expiry of their application.

4. Reconsideration of the anti-dumping measures due to expiry of their application shall be initiated, in case the relevant demand contains sufficient evidence that discontinuance of antidumping measures is likely to cause continuation of the practice or resumption of damage. This probability may be confirmed by:

(1) an evidence of continuation of dumping effect and the damage; or

(2) an evidence of complete or partial liquidation (prevention) of a damage due to application of the anti-dumping measures; or

(3) evidence, confirming that the status of the exporters or economic conditions are deemed those, under which the probability of emerging of new types of dumping, causing damage, may not be excluded.

5. In the process of reconsideration of the anti-dumping measures due to expiry of their application, the exporters, importers, competent bodies and Ukrainian producers shall be provided with an opportunity to supplement, refute or comment on the demand to reconsider the anti-dumping measures and conclusions of the Ministry, which contain properly substantiated and forwarded to the Ministry proofs as to the possibility of continuation of resumption of dumping and damage due to discontinuation of the force of antidumping measures.

6. The Ministry shall publish a notice in the newspaper on the actual ending of the term of application of anti-dumping measures.

Article 20. Intermediate Reconsideration of Anti-Dumping Measures

1. The Commission may review the necessity of continuation of application of the anti-dumping measures on the grounds of a substantiated demand of a body of executive power of the importing country, an exporter, importer or a national producer, under condition that at least one year has elapsed from the date of application of the definitive anti-dumping measures. Such demand shall be submitted to the Ministry and should provide for sufficient evidence and substantiation of the necessity of an intermediate reconsideration.

2. The intermediate reconsideration shall be initiated if the relevant demand contains sufficient evidence, proving that:

(1) continuation of application of anti-dumping measures is no more necessary for the prevention of dumping;

(2) and (or) continuation or resumption of damage infliction is unlikely, should the anti-dumping measures be cancelled or altered;

(3) the applied anti-dumping measures are not or shall not be sufficient for the prevention of dumping which causes damage.

3. In the process of reconsideration, carried out according to this Article, the Ministry shall in particular study:

(1) whether the circumstances, of dumping and damage, have considerably changed;

(2) whether the applied anti-dumping measures had the desired effect and whether there is prevention of damage, previously established, according to Article 10 of this Law;

The Commission shall take into account all the properly grounded evidence, related to the specified reconsideration, while making its ultimate decision.

Article 21. Reconsideration of Anti-Dumping Measures in order to Establish Individual Values of a Margin of Dumping for New Exporters or Producers

1. The Ministry, by decision of the Commission, shall reconsider the anti-dumping measures for determination of individual values of dumping margins for the new exporters or producers from exporting countries subject to consideration and who have not exported goods within the period of investigation, under results of which the anti-dumping measures have been applied.

2. The Ministry shall fulfill the specified reconsideration under the following conditions:

(1) a new exporter or producer proves that he is not connected with those exporters or producers from an exporting country, whose importation of goods into the importing country is subject to the application of anti-dumping measures;

(2) the exporters or producers, determined in clause 1 of this part, performed exportation of goods into the importing country within the period of investigation, or where the specified exporters and producers prove that they have signed irrevocable contracts on the exports of sufficient quantities of products to the importing country.

3. The Ministry, by decision of the Commission, shall reconsider the anti-dumping measures for the purpose of establishing individual values of a margin of dumping for a new exporter or producer from the exporting country. Such reconsideration shall be executed within a short period of time, established by the Commission.

4. Within the period of such reconsideration the Ukrainian producers may provide their comments on expediency of such reconsideration.

5. Collection of the acting anti-dumping duty from a new exporter, subject to this reconsideration, shall be terminated by a relevant decision of the Commission and mandatory registration of contracts on imports into the importing country shall be introduced according to Article 28 of this Law, with the aim to resume collection of an anti-dumping duty from the date of initiation of the relevant reconsideration, in case the presence of dumping on the part of this exporter has been proved in the process of such reconsideration.

6. The provisions of this Article shall not be applicable, where the anti-dumping duty is charged according to part seven of Article 16 of this Law.

Article 22. Accelerated Reconsideration of Anti-Dumping Measures

1. An exporter, importing goods to the importing country, that are covered by the definitive anti-dumping duty, who has not been identified as an individual subject of a primary anti-dumping investigation by reasons, other than refusal to cooperate with the Ministry, has a right to apply to the Ministry with a demand to initiate an accelerated reconsideration of anti-dumping measures for the purpose of establishing by the Ministry and the Commission the rate of the definitive anti-dumping duty for the said exporter.

(part one of Article 22 as amended by the Law of Ukraine N 3027-IV of 1 November 2005)

2. The Ministry shall perform an accelerated reconsideration of anti-dumping measures, provided the Commission has made a corresponding decision at its extraordinary meeting.

3. While conducting the accelerated reconsideration of anti-dumping measures, a national producer may submit to the Ministry his comments on expediency of performing the specified reconsideration.

4. Collection of the acting anti-dumping duty from an interested exporter, subject to this reconsideration, shall be terminated by a relevant decision of the Commission on performing of an accelerated reconsideration of anti-dumping measures. This very decision shall introduce a mandatory registration of contracts on imports into the importing country according to Article 28 of this Law, which is aimed at resumption of collection of the anti-dumping duty since the date of initiation of the relevant reconsideration, under condition the presence of dumping with such an exporter has been proved during this reconsideration.

5. Provisions of this Article shall not be applicable in those cases, where the anti-dumping duty is charged according to part seven of Article 16 of this Law.

Article 23. Resumption of Anti-Dumping Investigation

1. If a national producer provides the Ministry with substantial evidence that the anti-dumping measures cause no changes or cause insignificant changes in the price of goods, importation of which is covered by the anti-dumping measures, while reselling these goods or prices of the next sale of such products in the importing country, the Ministry may resume an anti-dumping investigation by decision of the Commission, made by a simple majority of vote, in order to define to which extend the anti-dumping measures affected the specified prices of such products.

2. After resumption of an investigation pursuant to this Article, the exporters, importers and the importing country producers shall be provided with an opportunity to give their comments on dynamics of prices of goods, with respect to importation of which the anti-dumping measures are applied, while reselling such goods or prices of the next sale of such products in Ukraine. In case the Ministry determines that there is a change in the aforementioned prices because of application of the anti-dumping measures, in order to prevent the damage, established earlier according to Article 10 of this Law, the Ministry shall calculate anew:

(1) the export prices according to Article 8 of this Law;

(2) the size of a margin of dumping for the calculation of new export prices.

If the Ministry determines that the absence of changes in prices in the importing country is caused by a decrease in export prices before or after application of the anti-dumping measures, the value of the margin of dumping may be recalculated with a decrease in export prices taken into account.

3. If during the resumed investigation, the Ministry should establish that the margin of dumping has increased, upon the Ministry's proposal, the Commission shall approve a decision by a simple majority vote to introduce amendments to the previous decision regarding the application of a new anti-dumping duty rate in connection with the establishment of new export prices. Within one month after it was submitted by the Ministry, the proposal shall be approved by the

Commission unless it decides by a simple majority vote to reject it. The anti-dumping duty rate established in accordance with this Article shall not be a double of the duty rate established by the Commission in its original decision.

(part three of Article 23 is in the wording of the Law of Ukraine N 3027-IV of 1 November 2005)

4. The corresponding provisions of articles 12 and 13 of this Law shall be applied in the process of the resumed investigation, initiated according to this Article. Generally, the resumed investigation terminates not later than after six months from the date of its resumption.

5. Any changes in the normal value, which are stated to have taken place, shall be taken into account in the process of the resumed investigation if the complete and duly proved by evidence information on the normal value (here and hereinafter in this chapter - more than one normal value), inspected by the Ministry is provided to the Ministry within the term, determined in the notice on initiation of an anti-dumping investigation. If the normal value is calculated anew in the process of the resumed investigation, the contracts on importation of goods into the importing country, subject to such an investigation, are subject to the mandatory registration according to Article 28 of this Law prior to making a decision due to the results of the aforementioned resumed investigation.

Article 24. Refund of the Paid Amounts of Anti-Dumping Duty

1. An importer has a right to demand the anti-dumping duty to be refunded, provided this importer proves and the Commission takes a relevant decision that the value of a margin of dumping, on the basis of which the rate of the said duty has been calculated, was decreased to a zero rate or to the level that is lower than the value of the preliminary calculated margin of dumping, on the grounds of which the anti-dumping duty has been collected.

2. For the purpose of refund of the paid amounts of the anti-dumping duty, an importer shall submit a corresponding application to the Service. This application shall contain information on customs bodies that carried out the customs legalization of products, covered by the anti-dumping duty. The application shall be supplemented with documents, confirming importation of goods into the importing country, their customs legalization and payment of the anti-dumping duty within six months from the date of taking the Commission's decision on imposition of the definitive anti-dumping duty or from the date when the ultimate decision on collection of amounts that shall secure payments of the preliminary anti-dumping duty has been made.

The Service shall immediately forward to the Ministry the originals of such application and the attached documents. Copies of the stipulated documents shall be directed to the Commission and the Ministry of Finance of Ukraine.

3. The application on refund of the paid amounts of anti-dumping duty shall be considered properly substantiated, under condition it provides for accurate information on the paid amounts of an anti-dumping duty and is accompanied by all the customs documents on settlements and payments of the specified amounts. The application should also contain substantiation of the normal value and export prices in the importing country for the exporters or producers, which have paid the anti-dumping duty within the term, established in part two of this Article.

In case the importer is not related to the exporter or producer of the said goods and where it is impossible immediately to use the available information, specified in parts two and three of this Article, or the exporter or producer refuses to provide the importer with such information, the stipulated application shall contain substantiation of the exporter or producer, proving that the value of the margin of dumping has been decreased or removed according to this chapter, as well as respective evidence, confirming this substantiation.

The Ministry shall reject the abovementioned application, unless the exporter or the producer submits this evidence within 30 days from the date of the Ministry' reception of the application.

4. The Commission on proposal of the Ministry shall consider the specified application together with the conclusions of the Service and the Ministry of Finance of Ukraine and make a decision as to its expediency and the extent of its satisfaction. The Commission shall make a relevant decision by the results of such consideration. The Commission may take a decision on initiation of an intermediate reconsideration of the anti-dumping measures. The Commission shall use the information and conclusions arising from such reconsideration and which are established in compliance with the rules, used during such reconsideration, for the purpose of determination of substantiation and the size of refunding of paid amounts of the anti-dumping duty.

5. The Commission shall generally take a decision on refunding of amounts, paid in excess of the actual fixed rate of the margin of dumping within twelve months, but not later than eighteen months from the date of submission by an importer of the products, subject to application of the anti-dumping measures, the application on refunding of paid amounts of the anti-dumping duty. The Ministry of Finance of Ukraine shall refund the stipulated amounts within 90 days from the date of making a relevant decision of the Commission.

If the interested importer has not completed the composing of documents on refunding of paid amounts of the anti-dumping duty within the terms, specified in this part, these amounts shall not be refunded.

Article 25. Final Provisions on Reconsideration of Anti-Dumping Measures, Resumption of Anti-Dumping Investigation or Refunding of Paid Amounts of the Anti-Dumping Duty

1. While reconsidering the anti-dumping measures, resumed investigations or refund of the paid amounts of anti-dumping duty in accordance with this chapter, the Ministry, in case the circumstances have not changed, shall act according to the rules of conducting an anti-dumping investigation, under the results of which, collection of an anti-dumping duty has been introduced, taking into account the requirements of articles 7-9 and 30 of this Law.

2. In the process of an anti-dumping investigation, in accordance with this chapter, the Ministry shall examine the authenticity of export prices according to articles 7-9 of this Law.

In case the decision on the development of the export price has been made according to Article 8 of this Law, the Ministry shall calculate the export price without taking into account the paid amounts of the anti-dumping duty, under condition the Ministry has been provided with substantiated evidence, proving that the rate of an anti-dumping duty properly affects the reselling prices of products and prices of the next sale of such products in the importing country.

3. The provisions of this chapter shall create no impediments to the customs legalization of goods, subject to an anti-dumping investigation as to reconsideration of the anti-dumping measures or refund of paid amounts of the anti-dumping duty, carried out according to this chapter.

Chapter VI

GENERAL AND SPECIAL PROVISIONS ON COLLECTION OF ANTI-DUMPING DUTY

Article 26. Goods with a Short-Term Product Cycle

1. A national producer, manufacturing or processing goods with a short-term product cycle may submit to the Ministry an application on establishment of the category of products and attributing to this category of goods, with respect to the imports of which, two or more positive conclusions as to the presence of dumping have been made.

2. The application shall provide for:

(1) information on goods with a short-term product cycle or similar goods, with respect to the imports of which two or more positive conclusions as to the presence of dumping have been made;

(2) information on goods with a short-term product cycle or similar products which the applicant is willing to attribute to the same product category, to which the products are included, with respect to the imports of which two or more positive conclusions on the presence of dumping have been made;

(3) information on goods with a short-term product cycle, or similar products which the applicant is willing to remove from the category of products with respect to the imports of which two or more positive conclusions as to the presence of dumping have been made;

(4) grounds for attributing and (or) removal of goods from the category of products to which goods, with respect to the imports of which two or more positive conclusions as to the presence of dumping have been made, according to clauses 2 and 3 of this part;

(5) complete description of goods with a short-term product cycle or similar goods;

(6) evidence, proving that the applicant is a national producer according to Article 11 of this Law.

The Ministry shall consider the evidence, provided with the application, in order to identify whether they are sufficient for preparation of a corresponding report and transference this application to the Commission.

Where the Ministry makes a positive conclusion on the sufficiency of evidence, it shall make a relevant report and submit it to the Commission.

3. Upon receipt of the aforementioned application from a national producer and the relevant report of the Ministry, the Commission shall:

(1) apply for the Ministry and the Service for the immediate confirmation of positive conclusions, which are the grounds for the aforementioned application;

(2) upon reception of such confirmation determine whether:

- the stipulated goods are subject to positive conclusions as to the presence of dumping and whether such goods are goods with a short-term product cycle or similar products;
- the applicant is an authorized representative of the national producer.

4. In case the conclusions of the Commission, in accordance with clause 2 of part two of this Article is positive, the Ministry, by order of the Commission, shall:

(1) publish an announcement in the newspaper on submission of the application;

(2) provide the interested parties, which informed the Ministry of their concern according to part twelve of Article 12 of this Law, with an opportunity to submit their comments and forward a proposal to conduct the corresponding hearings at the Ministry according to Article 12 of this Law.

5. Not later than 90 days after submission of the corresponding application according to part one of this Article, the Commission, upon the proposal of the Ministry, shall:

(1) determine the volume of the category of products, under which the goods with a short-term product cycle or the similar goods shall be classified and with respect to the imports of which positive conclusion as to the presence of dumping have been made;

(2) any time on its own initiative may take a decision on introduction of changes to the category of goods, established according to clause 1 of this part. The Commission shall take such decision, under condition of observation of requirements, stipulated in part three of this Article;

(3) while making decision according to clause 1 or 2 of this part, shall monitor that the category of goods included only similar goods with a short-term product cycle, produced with the use of similar technological processes, in the similar conditions and having a similar application.

6. The goods with a short-term product cycle are goods that pursuant to the conclusion of the Ministry and the Commission are deemed outdated due to the introduction of new technologies in four years after commencement of their sales. The outdated goods are those goods, which at the moment do not meet the requirements of the latest technologies.

7. For the purpose of this Article a national producer is producer (producers) who represents a certain branch of the national production, manufacturing or processing goods with a short-term product cycle or similar goods which:

(1) directly or indirectly compete with other products, with respect to the imports of which two or more positive conclusions on the presence of dumping have been made;

(2) is so similar to such products that may be attributed to the same category, established according to this Article.

8. For the purpose of this Article a positive conclusion as to the presence of dumping shall mean:

(1) a definitive positive conclusion as to the presence of dumping, made by the Commission according to chapters IV and VI of this Law, grounding on the data of an eight-year term which preceded the submission of an application by a national producer on establishment of the category of products and attributing of products to the category, to which goods, with respect to the imports of which two or more positive conclusions as to the presence of dumping have been made, are included and as to which a relevant decision on collection of an anti-dumping duty at the rate of not less than 15 % of the customs value of goods, subject to an investigation, has been made;

(2) or preliminary conclusion as to the presence of dumping, approved by the Commission according to chapters IV and VI of this Law, grounding on the data of an eight-year term which preceded the submission of an application by a national producer on establishment of the category of products and attributing the goods to the category, which involves goods, with respect to the imports of which two or more positive conclusions as to the presence of dumping have been made within the process of an anti-dumping investigation, during which a decision on acceptance of the exporter's obligation to discontinue dumped imports has been made according to Article 15 of this Law.

9. Goods with a short-term product cycle shall be subject to a positive conclusion as to the presence of dumping, on condition the Commission:

(1) establishes a value, by which the normal cost of such products exceeds its export price in the importing country;

(2) determines in the positive conclusion on the presence of dumping, or in the decision on introduction of collection of an anti-dumping duty, made due to the results of the positive conclusion on the presence of dumping of individual producer (exporting country) with respect to imports of which the value, specified in clause 1 of this part, has been approved.

Article 27. Avoidance of Payment of Anti-Dumping Duty

1. The anti-dumping duty, collected according to this Law, may be extended to the imports of similar goods or a part of such goods in case avoidance of payment of anti-dumping duty takes place.

Any changes in the structure of trade between the importing country and other countries, emerging in the process of transactions and (or) activities of foreign producers, exporters and (or) importers, etc., shall be treated as avoidance of payment of anti-dumping duty. Such changes shall be deemed insufficiently substantiated or economically ungrounded, except cases of application of an anti-dumping duty, proving that:

- introduction of an anti-dumping duty shall be neutralized by prices and (or) volumes of similar products;

- the dumping exists because of the normal value which has been previously calculated for similar products.

2. The assembly of certain products in the importing country or in a third country shall be considered avoidance of payment of the anti-dumping duty, where:

(1) such transaction has been initiated or is carried out immediately before or after initiation of an anti-dumping investigation and the components of such products are supplied from the country with respect to imports of which the anti-dumping measures are applied;

(2) the value of component parts of such product is not less than 60 % of the total value of the finished product. In this respect there shall be no fact of avoidance of payment of anti-dumping duty, if the added value of components that have been assembled in the course of the aforementioned transactions and (or) completion of production exceeds 25 % of the production costs.

(3) application of an anti-dumping duty is neutralized by prices and (or) volumes of the assembled goods or similar goods and there are sufficient evidence of the presence of dumping because of the normal value, previously calculated for the assembled or similar goods.

3. Where an interested party (an applicant in an anti-dumping investigation or a body of executive power of the importing country) considers that there is a fact of avoidance of payment of anti-dumping duty, such person shall file to the Ministry a complaint, providing for sufficient evidence of the presence of facts, determined in parts one and two of this Article.

4. Upon the complaint, submitted according to part three of this Article, and on the basis of a corresponding decision of the Commission, the Ministry shall carry out an anti-dumping investigation as to the facts of avoidance of payment of anti-dumping duty. In the aforementioned decision the Commission shall authorize the Ministry to establish:

(1) a compulsory registration of the contracts on imports to the importing country according to part four or Article 28 of this Law; or

(2) depositing of a relevant amount at the account by a supplier. Funds to the deposit account may be remitted at the place of location of customs bodies, performing the customs legalization of goods, subject to the specified anti-dumping investigation. The Service shall establish the procedure of funds remitting to a deposit account.

For the purpose of investigation of the facts of avoidance of payment of anti-dumping duty, the corresponding provisions on initiation and performance of anti-dumping investigations, envisaged by this Law, shall be applied, except those provisions, concerning the terms. The abovementioned investigation shall be fulfilled by the Ministry with the assistance of the Service within the term, not exceeding nine months.

5. In case the Ministry establishes the facts of avoidance of payment of anti-dumping duty, the Commission, upon proposal of the Ministry, may take a decision by a simple majority of vote as to application of anti-dumping measures. Such measures shall be applied after the Commission takes a relevant decision according to part four of this Article.

6. Where imports of products into the importing country are performed under a license of the Ministry, certifying that such product imports do not cause an avoidance of payment of an anti-dumping duty, no anti-dumping measures shall be applied to such imports and the contracts, under which the stipulated imports have been fulfilled, shall be exempted from compulsory registration in accordance with part four of Article 28 of this Law.

7. The provisions of this Article shall not create impediments to execution of the customs legalization of goods, subject to an anti-dumping investigation.

Article 28. General Provisions on Collection of Anti-Dumping Duty

1. A provisional or definitive anti-dumping duty shall be collected at the rate and under the terms, established by a relevant decision of the Commission on application of anti-dumping measures. The specified duty shall be paid irrespective of the payment of other taxes and fees (compulsory payments), including duty, generally paid while importing certain goods into the customs territory of the importing country. The countervailing duty and the anti-dumping duty shall not be simultaneously imposed as to goods, imported by the same supplier.

(part one of Article 28 is amended pursuant to Law of Ukraine of 13 March 2012 N 4496-VI)

2. The Ministry shall publish in the newspaper the announcement on a corresponding decision, introducing collection of a provisional or definitive anti-dumping duty, on acceptance of an exporter's obligations to terminate the dumped imports, or on termination of the anti-dumping procedure or an anti-dumping investigation without application of anti-dumping measures. Meeting the requirements to the protection of confidential information, such decisions should provide for a list of exporters, where it is possible, or a list of the interested countries, as well as description of goods, summary of the facts and basic conclusions as to the presence of dumping and the damage. A copy of the decision shall be forwarded to the interested parties.

Provisions of this part shall as well be applied to the corresponding decisions on reconsideration of anti-dumping measures.

3. For the purpose of protection of the national interests the force of the anti-dumping measures, according to this Law, may be suspended by a decision of the Commission, made by a simple majority of vote, for the term up to nine months. This term upon the Ministry's proposal may be prolonged to one year by a relevant decision of the Commission, made by a qualified majority of vote. The practice of the anti-dumping measures may be suspended under the presence of the following conditions:

(paragraph one of part three of Article 28 as amended by the Law of Ukraine N 3027-IV of 1 November 2005)

(1) economic conditions on the market of Ukraine temporarily changed so that due to the suspension of the practice of anti-dumping measures, resumption of causing damage will be improbable;

(clause 1 of part three of Article 28 as amended by the Law of Ukraine N 3027-IV of 1 November 2005)

(2) the national producer had an opportunity to submit his comments on suspension of the force of anti-dumping measures;

(3) the comments, provided by a national producer to the Ministry, were taken into account by the Commission.

(clause 3 of part three of Article 28 as amended by the Law of Ukraine N 3027-IV of 1 November 2005)

The force of the anti-dumping measures may be resumed by the decision of the Commission provided their suspension is unjustified. An interested party may submit to the Ministry its comments on this matter, which may be taken into consideration by the Ministry. The Commission shall take a relevant decision as to this issue upon representation of the Ministry.

(paragraph five of part three of Article 28 as amended by the Law of Ukraine N 3027-IV of 1 November 2005)

4. The decision on introduction of the practice of registration of contracts on importation of goods into the importing country, including their compulsory registration according to this Law, shall be made upon representation of the Ministry at the extraordinary meeting of the Commission. A substantiated application (complaint) of an interested party, body of executive power of the

importing country or that of the national producer may be the basis for the relevant recommendation of the Ministry.

After reception of the application (complaint), the Ministry shall consider all the provided information and evidence, contained therein, within five days from the day of their reception with the purpose of determination whether such information and evidence are sufficient for making a relevant decision by the Commission. In case the Ministry establishes that these information and evidence are sufficient, the Commission at its meeting, upon proposal of the Ministry, may take a decision on introduction of the practice of registration of contracts on imports into the importing country, including their compulsory registration according to this Law.

Grounding on the decision on introduction of the specified registration and after validation of the said decision, the anti-dumping measures shall be applied to the imports, performed under the contracts registered in the Ministry.

The decision on registration of the contracts on imports into the importing country shall provide for a precise identification of an object of registration and, if necessary, an approximate rate of an anti-dumping duty, calculated for the purpose of a possible collection of such duty in the future. The customs value of goods shall be calculated according to the basic terms of delivery CIF the importing country border.

The term of the practice of compulsory registration of contracts on imports into the importing country shall not exceed nine months from the date of its introduction.

Importation of goods to the customs territory of the importing country under the contracts on imports into Ukraine shall be carried out upon providing of a license for the imports, issued by the Ministry, and other documents, confirming remitting of a relevant amount to a deposit account. Funds may be remitted to a deposit account at the place of location of customs bodies, executing the customs legalization of goods, imported into the customs territory of the importing country under the contracts, registered according to the procedure, determined by this Article. In certain cases the importer's payment of an anti-dumping duty may be performed in the form of a debt commitment.

5. In case importation of goods, with respect to which the anti-dumping measures are applied, are imported into Ukraine for the purposes of the Ministry of Defense of Ukraine, such products shall be exempted from an anti-dumping duty, under condition the Commission has taken a corresponding decision thereon and where importation of such goods into Ukraine is fulfilled in accordance with the contracts, registered according to part four of this Article.

6. The Service shall quarterly inform the Ministry and the Commission of the volumes of imports subject to an anti-dumping investigation or with respect to which the anti-dumping measures are applied, as well as on the amounts of an anti-dumping duty, collected according to the relevant decision of the Commission.

7. Without any damage to part six of the present Article, the Ministry may demand that in each individual instance the bodies of executive power of Ukraine should submit information needed in accordance with this Article for effective oversight of anti-dumping measures and oversight of activities undertaken by importers, sellers and Ukrainian producers. In this case, provisions of parts four and five of Article 13 shall apply. Any data supplied by the bodies of executive power in accordance with this Article shall be used in line with the requirements established by part six of Article 32.

(part seven was added to Article 28
according to the Law of Ukraine N 3027-IV of 1 November 2005)

Article 29. Verification of Information outside the Importing Country

1. If necessary, the Ministry may carry out verification of information outside the territory of the importing country with the purpose of:

(1) familiarization with book-keeping documentation of the importers, exporters, producers and their unions (associations), trade organizations, natural person, etc.;

(2) examination of authenticity of information as to the presence of dumping and the damage, submitted in the process of an anti-dumping investigation.

2. In the event of necessity the Ministry may initiate verification or the relevant investigations in other countries under condition of:

(1) consent of the corresponding interested parties;

(2) notification of the corresponding competent bodies by the Ministry;

(3) the absence of objections on the part of the preliminary informed stipulated competent authorities.

Upon receipt of the consent of an interested party the Ministry shall notify the competent bodies of the names and addresses of enterprises, to be inspected, as well as on the dates of performing these verifications, proposed by the Ministry.

In case the interested party gives no consent, within the term, proposed by the Ministry, the verification of the said information may be unfulfilled. In this case the corresponding provisions of Article 31 shall be applied.

3. The interested parties shall be notified of the list of information, subject to verification, and other information, which should be provided by these parties in the process of verifications. The Ministry may demand providing of more detailed information, if such a necessity arises in the course of verification.

4. While conducting the verification of information, the Ministry may apply for the assistance of the members of the Commission.

Article 30. Selective Methods of Anti-Dumping Investigation

1. Where the number of applicants, exporters or importers (hereinafter - parties), types of products or corresponding operations is considerable, the Ministry may confine oneself with:

(1) reasonable number of parties, types of products or operations, using a sampling which is statistically grounded on the basis of information, which is available with the Ministry at the moment; or

(2) the greater volumes of production, sales or product exports that, in case of necessity, may be investigated within the terms, specified in this Law or established by the Commission.

2. The Ministry shall perform an ultimate selection of parties, types of products or operations subjected to the application of selective methods of an anti-dumping investigation. After consultations with the interested parties or under their consent the priority shall be given to a respective selection, provided these interested parties have:

(1) informed the Ministry of their concern therein according to part twelve of Article 12 of this Law;

(2) provided the Ministry with sufficient and applicable information within three weeks from the date of initiation of an anti-dumping investigation in order for the Ministry to select relevant sampling.

3. In case the Ministry uses selective methods of an anti-dumping investigation according to this Article, the individual value of a margin of dumping shall be calculated for the exporter or producer that has not been selected first, and furnishes the corresponding information within the terms specified by this Law, except those cases, where the number of the exporters or producers is significant to that extend, that investigation of the stipulated values for individual exporters or producers shall create ungrounded complications for the performance of an anti-dumping investigation and create impediments to the timely termination of this investigation and making a decision on the application of anti-dumping measures.

(part three of Article 30 as amended
by the Law of Ukraine N 3027-IV of 1 November 2005)

4. Where after making a decision by the Ministry a decision on application of a selective method of an- anti-dumping investigation has been made and all the selected parties or some of them avoid the cooperation with the Ministry to the extend that sufficiently affects the results of an anti-dumping investigation, the Ministry may carry out a new sampling. Provided an interested party avoids cooperation with the Ministry on condition of the shortage of time for new sampling, the relevant provisions of Article 31 of this Law shall be applied.

Article 31. Avoidance of Cooperation with the Ministry

1. In case, an interested party refuses to provide necessary information or fails to provide it within the terms, envisaged by this Law, or creates impediments to an anti-dumping investigation, the Ministry, on the grounds of the available information, may take positive or negative preliminary or definitive conclusions on the necessity of immediate application of anti-dumping measures.

If in the process of an anti-dumping investigation the Ministry establishes that the interested party has provided inadequate or incorrect information the Ministry shall:

(1) ignore such information;

(2) notify the interested parties of the consequences of avoidance of cooperation with the Ministry.

2. The fact of failure to provide a response on an information medium shall not be deemed avoidance of cooperation with the Ministry, provided the interested party proves that providing of a response in the forms, established by the Ministry, would likely cause excessive incidental or excessive additional expenditures.

3. If the information, provided by the interested party is incomplete, the Ministry shall take it into account under condition that:

(1) such incompleteness does not complicate the possibility of taking adequate conclusions by the Ministry;

(2) such information has been submitted to the Ministry within the proper terms;

(3) such information is suitable for verification.

(4) the interested party, providing the information, act in good faith and to the best of its abilities.

4. In case the Ministry does not take into account the provided evidence or information, the interested party, who has submitted this evidence and information shall be immediately notified of the reasons of t rejection of the said information and shall be provided with an opportunity to supply additional comments within the terms, established by the Ministry. Where such comments are considered insufficient, the reasons for rejection of the aforementioned evidence or information shall be forwarded to a corresponding interested party and specified in the conclusions, published in the newspaper.

5. Where the conclusions, including those, related to the normal value, have been made according to part one of this Article, particularly, on the basis of information, provided in the corresponding application, such information shall be verified, if it is possible, with the observance of the determined terms of an anti-dumping investigation, by other independent sources available with the Ministry and (or) those sources, provided by other interested parties in the process of an anti-dumping investigation, which concern:

(1) the published list of prices;

(2) statistical reports and customs statistics, kept by the bodies of state power of the respective country.

6. In case the interested party avoids to cooperate with the Ministry completely or partially and the relevant information, concerning the anti-dumping information is not provided thereof, the results of an anti-dumping investigation for this party may be less favorable, than for those parties which do not avoid such cooperation.

Article 32. Confidential Treatment

1. Any information which has a confidential character (due to the reason, that its disclosure gives significant advantage to a competitor or may cause considerable negative consequences in future for persons, providing or receiving this information, etc.), as well as information, provided on a confidential basis by interested parties in the process of an anti-dumping investigation, shall be deemed confidential by the Ministry, where the parties provided sufficient proofs thereof.

2. The interested parties, providing confidential information, should supplement it with a non-confidential summary. This summary should be detailed enough to comprehend the essence of the provided confidential information. In case the interested parties are not able to make a summary of confidential information, these interested parties should provide sufficient grounds for impossibility of submission of the stipulated summary.

3. Where the Ministry considers that the demand as to confidential treatment of information is ungrounded and the person, providing it, is not willing to open this information to public or refuses his\her consent for its disclosure in general terms or in a form of summary, such information may be disregarded, except cases, where upon the use of relevant sources there may be compelling evidence that such information is authentic. Rejection of the demand on confidentiality of information should be duly substantiated.

4. The provisions of this Article do not impede the disclosure of a general information by the Ministry or the Commission, particularly, legal substantiation of the decisions made according to this Law, or to the disclosure of evidence, on the grounds of which the Ministry or the Commission take the respective decisions. While disclosing such information, the legal interests of the interested parties as to nondisclosure of their commercial and (or) state secrets shall be taken into account.

5. The Ministry, the Commission or their official officers should not disclose the information, obtained according to this Law without a special consent of a person, who has provided such information, if this person insists on the confidential treatment of such information. The information exchanged between the Ministry and the Commission, as well as information related to the meetings of the Commission or official documents of the Ministry or the Commission, concerning an anti-dumping investigation shall not be disclosed, except cases, envisaged by this Law.

6. Information received in accordance with this Law shall be used only for the purposes for which it has been requested. This provision shall not rule out the use of information received in the course of one anti-dumping investigation for the purposes of initiating other anti-dumping investigations as part of one and the same anti-dumping investigation regarding the goods under review.

(part six of Article 32 is in the wording
of the Law of Ukraine N 3027-IV of 1 November 2005)

7. The right to have an access to the confidential information, provided by the interested party or by the Ministry in the process of an anti-dumping procedures and investigations according to this Law, shall be enjoyed by legal advisers or lawyers- citizens of the importing country -acting on behalf of the interested party.

The Ministry shall keep accounting of physical persons that have an access to the confidential information and shall refuse the access to confidential information, where it is established that a person has disclosed the information, which is deemed confidential according to this Law.

Chapter VII

FINAL PROVISIONS

Article 33. Providing Information to the Interested Parties

1. The interested parties may demand providing information as to the evidence and conclusions, on the grounds of which the provisional and anti-dumping measures have been applied. After application of the provisional anti-dumping measures a written demand on providing such information shall be forwarded to the Ministry. The Ministry shall within the undertime give a written reply to this demand.

2. The interested parties may demand provision of the ultimate information, related to the evidence and conclusions, according to which the Ministry proposes to apply the definitive anti-dumping measures, or suspend or terminate the anti-dumping investigation without application of anti-dumping measures. In this respect the Ministry shall pay a special attention to the provision of information, evidence and conclusions that are different from those, on the grounds of which the decision on application of the provisional anti-dumping measures has been made.

3. All demands concerning the provision of ultimate information specified in part two of this Article shall be submitted to the Ministry in a written form. In the event of application of the provisional anti-dumping measures such demands shall be forwarded to the Ministry not later than one month from the date of publication of a decision on their application. Where the provisional anti-dumping measures have not been applied, the interested parties may demand provision of the ultimate information within the terms, established by the Ministry.

4. The Ministry shall provide the ultimate information in writing. The information is generally provided, with consideration of the requirements to the protection of confidential information, not later than one month prior to making an ultimate decision by the Commission or prior to the date of submission by an interested party of its final proposal according to Article 16 of this Law. If the Ministry and (or) the Commission fail to provide the information, evidence or conclusions immediately, those information, evidence or conclusions shall be provided later within the undertime. Provision of information shall not create impediments to making further decisions by the Ministry or the Commission. Where such decision is based on the evidence and conclusions, different from those, provided with the previous information, the information on the presence of new evidence and conclusions shall be provided to the interested parties within the undertime.

5. All comments of the interested parties, supplied after the ultimate information has been provided, shall be taken into account on condition, they were received by the Ministry within the terms, established by the Ministry for each individual case but which shall not exceed ten days.

6. The information, documents and comments, supplied to the Ministry by one of the interested parties in the process of the investigation that is carried out in accordance with this Law, shall be supplied to all other interested parties as well. In case the party, submitting such information, documents and comments to the Ministry, fails to forward the specified information, documents and comments to other interested parties, such information, documents and comments shall not be considered in the process of an investigation.

Article 34. Notification of the Competent Bodies of an Interested Country

1. The Ministry of Foreign Affairs of Ukraine shall notify the competent authorities of an interested country of all decisions of the Commission on the investigations, which are carried out according to this Law.

2. A note on the initiation of an anti-dumping investigation that is forwarded to the competent bodies of an interested party shall contain the following information:

(1) the name of the country (countries) of origin and (or) exports of products subject to an investigation;

(2) the date of initiation of an anti-dumping investigation;

(3) grounds for statement on the presence of dumping;

(4) a brief summary of conclusions which are the basis for statement on the presence of damage;

(5) the addressee, to which the interested parties shall send their comments on this decision;

(6) terms, established by a relevant decision of the Commission, for submission of comments of the interested parties.

3. According to part one of this Article the Ministry of Foreign Affairs of Ukraine shall notify the competent bodies of an interested country of:

(1) a positive or negative, preliminary or definitive conclusion as to the presence of dumping and the damage;

(2) a decision to accept an exporter's obligation to discontinue dumped imports according to Article 15 of this Law;

(3) termination of the force of such obligation;

(4) cancellation of the definitive anti-dumping duty.

Article 35. Correction of Executor's Mistakes

1. The mistakes of the executors, committed in mathematical operations, typing, copying, duplication or similar operations, or other unintentional technical mistakes, which the Ministry refers to the mistakes, made by the executors, shall be corrected.

2. The Ministry may transfer to the interested parties the calculations, on the basis of which the ultimate decision on collection of an anti-dumping duty or that on reconsideration of anti-dumping measures shall be made, upon a written application of an interested party, which states that a mistake of the executors took place.

3. A written application specified in part two of this Article shall be submitted by an interested party to the Ministry within five working days from the date of delivery of the corresponding information to this interested party according to Article 33 of this Law. The interested party may submit to the Ministry its comments on the identified mistakes, made by the executors.

4. The comments, mentioned in part three of this Article, should be provided within five working days from the date of transference of the calculations, in case the Ministry does not prolong this term upon a written application of an interested party, filed within five working days from the date of transference of such calculations with substantiation of reasons for prolongation of the stipulated terms.

Such comments shall be provided in a written form to the Ministry and to all the interested parties. The interested parties may respond to the comments, provided according to this Article. This respond shall be registered by the Ministry within five working days from the date of expiry of the term of submission of such comments, unless the Ministry extends this term on the grounds of a written application of an interested party that shall be provided within five working days from the date of transference of calculations with substantiation of reasons for the prolongation of the stipulated terms.

5. The Ministry shall analyze and verify the comments and responds, provided pursuant to the provisions of this Article and, if necessary, correct the mistakes of executors, through introduction of amendments to the draft of ultimate decision on collection of an anti-dumping duty or draft of the decision on reconsideration of the anti-dumping measures. The Ministry shall notify the interested parties of introduction of such amendments. Introduction of amendments pursuant to the correction of errors, made by the executors, shall not be deemed making changes to the draft decision of the Ministry or the Commission on payment of an anti-dumping duty or reconsideration of the anti-dumping measures.

Article 36. Factors of the National Interest

1. The conclusion on whether the national interests require application of the anti-dumping measures shall be based on evaluation of all interests, including those of the national producers and consumers, effect of the imports subject to an anti-dumping investigation, on employment of the population, investments of the national producers and consumers as well as international economic interests of the importing country. According to this Article such a conclusion shall be made on condition, that all the parties have been provided with an opportunity to express their viewpoints according to part two of this Article. A especial attention shall be paid to elimination of the influence of barter disproportion, caused by the dumping, which causes damage, and resumption of a competition.

The anti-dumping measures, determined on the grounds of the dumping and the damage, which have been established in the process of an anti-dumping investigation, may be unapplied, where the Commission upon representation of the Ministry, taking into account all the provided information, makes an accurate conclusion that the application of such measures contradicts to the national interests.

2. The applicants, importers, their unions (associations), consumers and their organizations may express their points of view within the terms, established in the notification on the initiation of an anti-dumping investigation, and submit to the Ministry the information as to the correspondence of application of the anti-dumping measures to the national interests to be taken into account by the Commission while making a corresponding decision.

The Ministry may forward such information or its respective summary to other interested parties, specified in this Article, which may provide their comments in this respect.

3. The interested parties may demand the hearings of the Ministry to be conducted. Such demands shall be satisfied where they have been provided to the Ministry in writing within the terms, specified in the notice on the initiation of the anti-dumping investigation, or if they provide for the special reasons for arranging the hearings at the Ministry from the viewpoint of the national interests.

4. The interested parties may submit to the Ministry their comments on the Commission's decision on introduction of the provisional anti-dumping duty. The Ministry shall consider such comments in case they are filed with the Ministry within one month from the date of application of the provisional anti-dumping measures. The Ministry, in case of necessity, shall transfer these comments in a form of a corresponding summary to other parties that are entitled to provide such comments as well.

5. The Ministry shall consider the information, provided by an interested party according to part two of this Article and define to which extent such information is indicative. The results of such consideration and the decision on substantiation of this information shall be submitted to the Commission. The summaries of conclusions of the members of the Commission, reviewed at the

meeting of the Commission, shall be taken into account by the Ministry in its proposals, provided to the Commission according to Article 16 of this Law.

6. The interested parties may apply for the provision of evidence and conclusions, on the grounds of which the Commission may take its ultimate decisions. The Ministry shall provide such information, unless it creates impediments to the Ministry or the Commission while making the relevant decisions.

7. Any information, provided according to this Article, shall be taken into consideration on condition it is accompanied with the evidence, which substantiate its irrefutability, under the requirements of this Law.

"Article 36^{1}. Application of Anti-Dumping Measures Against Imports to Ukraine from Developing Countries That Are Members of the WTO

It is recognized that special regard must be given to the special situation of developing countries that are members of the WTO when considering the application of anti-dumping measures against imports from such countries. Possibilities of constructive remedies provided for by the legislation of Ukraine shall be explored before applying anti-dumping duties where they would affect the essential interests of a developing country that is a member of the WTO.

(article **36^{1}** was added in accordance with
the Law of Ukraine N 3027-IV of 1 November 2005)

Article 37. Acts of the Commission, the Ministry and the Service

The Commission, the Ministry and the Service, due to the performance of investigations in accordance with this Law and within the scope of their authorities, may adopt the corresponding acts. Such acts shall come into force within the established terms, unless otherwise stipulated by this Law, but not prior to the date of their publishing in the newspaper or by communicating them to the interested persons by an alternative means, and shall be obligatory for execution.

The Commission shall provide the explanation as to the application of this Law.

Article 38. The Procedure of Enactment of this Law

1. This Law shall enter into force after 30 days from the date of its publishing, with the exception of parts one- six, of clause 6 of part seven and parts eight-eleven of Article 5 of this Law which come into force from the date of their publishing.

2. Clause 2 of part two of Article 2, sentence two of part seven of Article 12, paragraph two of part nine of Article 12 and part four of Article 16 of this Law shall be applicable from the date of joining the GATT by the Ukraine and its accession to the WTO according to the established procedure.

3. The provisions of paragraph two of part three and paragraph two of part six of Article 14, as well as those of articles 33 and 35 of this Law shall be applied in relationships with the interested parties and (or) competent authorities of the exporting countries, under condition such competent bodies of the aforementioned exporting countries, which perform the anti-dumping investigations as to the imports from Ukraine, grant to the Ukrainian interested parties similar rights, stipulated in articles 14, 33 and 35 of this Law.

4. The laws and other normative and legal acts of Ukraine shall be applicable in the part, which is not in conflict with the provisions of this Law.

President of Ukraine **L. Kuchma**

Kyiv
22 December 1998
N 330-XIV

THE LAW OF UKRAINE

THE LAW "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS", 22 DECEMBER 1998, NO.331-XIV (WITH CHANGES AND AMENDMENTS)

As amended and added by the Laws of Ukraine
N 1595-III of 23 March 2000,
N 860-IV of 22 May 2003,
N 252-VI of 10 April 2008,
N 4496-VI of 13 March 2012

(In the text of the Law words "the Ministry of Economy of Ukraine"
were replaced with the words
"the central body of executive power in the field of economic policy"
according to the Law of Ukraine N 860-IV of 22 May 2003)

This Law shall establish mechanism of safeguards of the national industry against subsidized product introduced into commerce from other countries, customs unions or economic groups, regulate principles and procedure of initiation and conducting anti-subsidizing investigations, regulate application of the countervailing measures.

Section 1. GENERAL PROVISIONS

Article 1. Definitions

For the purpose of this Law all terms shall have the following meanings:

1. anti-subsidizing investigation shall mean investigation of a fact of granting a subsidy under the provisions of this Act;

2. affirmative determination shall mean determination of the existence of subsidization (injury);

3. negative determination shall mean determination of the absence of a fact of subsidization (injury);

4. governmental body shall mean legislative or executive authority of a country of origin or exporting country (customs union or economic group);

5. exporter shall mean a subject of economic and legal relations exporting products (goods) from a country;

6. injury shall mean the serious injury caused to the national industry or threaten to cause serious injury to the national industry or sufficient impediment to the national producer to create or expand production of the like products. The procedure of determination of injury is described in the Article 13 of this Act;

7. import shall mean importing products (goods) delivered to the customs territory of an importing country, when destined for consumption in this country;

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

9. countervailing duties (provisional or definitive) shall mean a special type of duty levied in the event of delivery of products to the customs territory of Ukraine, being subject to countervailing measures applied thereto (provisional or definitive);

10. countervailing measures, pursuant to the provisions of this Act, shall mean the provisional or definitive measures to be applied in the course of anti-subsidizing investigation or resulted therefore;

11. competent authorities shall mean the bodies of state authority of exporting country or of a country of origin (customs union or economic group), which pursue, within their powers, a foreign and/or foreign economic policy of a country in question;

12. exporting country shall mean a country of origin of products imported to Ukraine. An exporting country could be a country acting as an agent (customs union or economic group) with exception of those effecting transhipment through the country of export or not producing the like products or having no comparable price of such products;

13. country of origin shall mean a country (customs union or economic group) where products have been manufactured or subject to sufficient processing or finishing;

14. national producer shall mean an aggregate number of producers of similar products or those producers, whose aggregate production of such products constitutes the major proportion of the whole amount of the like products being manufactured in Ukraine. The peculiarities as to interpretation of the national industry are illustrated in the Article 14 and paragraph eight of the Article 15 of this Act;

15. period of investigation shall mean a period preceding the initiation of anti-subsidizing investigation to determine the existence of import subsidization;

16. sale shall mean a transfer of property by any person to ownership or use and/or possession or/and dispose of other person, e.g. under the terms of purchase and sale contracts, property lease, other civil and legal agreements, or in the event of change of one taken obligations to another or change in the terms of obligations to be performed;

17. recipient shall mean a subject of economic and legal relationships receiving money or profit resulted from traffic of products being subsidized under provisions hereof;

18. parties of anti-subsidizing investigation shall mean a foreign producer, exporter, importer, corporation (association), competent authorities of exporting country, national industry, etc., who have been duly notified of initiation of an anti-subsidizing investigation;

19. interested party shall mean a person notifying the central body of executive power in the field of economic policy (hereinafter referred as the Ministry) of his interest to be involved in anti-subsidizing investigation in accordance with the paragraph fourteen of the Article 15 of this Act and who is taking an active part in anti-subsidizing investigation by providing written evidences or other information sufficient to the purposes of this investigation. The interested parties could be:

(paragraph one of clause 19 of Article 1 is as amended by the
Law of Ukraine N 1595-III of 23 March 2000)

- a foreign producer, exporter, importer of the product under investigation, or corporation (association), where the majority of their members are foreigners, exporters or importers of the product under investigation;
- the competent authorities of an exporting country;
- a national producer, manufacturer or wholesale seller of the like products in Ukraine;
- the corporation (association), where the majority of its members produce or make wholesale trade of the like products in Ukraine;
- a labour union comprising employees of the enterprises producing or making wholesale trade of the like products in Ukraine;
- the executive bodies of the Ukrainian government within the range of their competence.

20. subsidy shall mean financial or other support provided by the government for production, processing, sale, transportation, export, consumption of the like products resulted in enjoyment of privileges (benefit) by a subject of economic and legal relations of an exporting country. The peculiarities of interpretation of subsidy are described in the Article 6 of this Act;

21. non-actionable subsidy shall mean a subsidy, which does not justify countervailing measures to be applied thereto;

22. actionable subsidy shall mean a subsidy, which justifies countervailing measures to be applied thereto;

23. subsidized import shall mean a delivery of products (goods) to the territory of an importing country, which enjoy subsidizing privileges and benefits granted for production, processing, transportation or exporting of such products;

24. product shall mean any product manufactured for trading;

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

26. product of investigation shall mean an imported product introduced to the commerce of Ukraine, which is subject to anti-subsidizing investigation described in an appropriate notice on initiation and performance of investigation in question;

27. Ukrainian producers shall mean the producers of the like products or directly competitive products manufactured in Ukraine.

Article 2. Implementation of Act

1. This Act shall be applied to a subsidized import of products (goods) introduced into the commerce of Ukraine from the territory of the country of origin or those exported to the country of importation from an intermediate country. In cases, where products are not imported directly to the customs territory of Ukraine from the country of product origin but are transhipped through a country, transaction or transactions, shall be treated as if made between the country of origin of a product and Ukraine.

2. Countervailing measures shall be applied to the subsidized imports introduced to Ukraine for the purpose of elimination of the consequent impact of a subsidy granted directly or indirectly for the production, processing, transportation or export of products, importation of which causes serious injury to national producer of the like products.

The importation of products to Ukraine shall be deemed to application of the countervailing measures, if under provisions of Articles from 6 to 9 of this Act the products in question enjoy privileges or benefit out of an actionable subsidy.

This Act shall be also applied, if the subsidies, set out in the first and second paragraphs herein, have been granted by the government of the country of origin, exporting country or intermediate country, from the territory of which the products in question are exported.

3. This Act does not provide for applying:

1. special rules and regulations in the branch of agriculture;

2. measures in the framework of the General agreement on tariffs and trade (hereinafter referred as GATT) and World trade organization (hereinafter referred as WTO);

3. special rules and regulations established by international agreements of Ukraine with binding obligations approved by Verkhovna Rada[1] of Ukraine.

Article 3. Language of anti-subsidizing investigations

1. Under the provisions of this Act anti-subsidizing investigations shall be performed in the state language of Ukraine.

[1] Verkhovna Rada shall mean the Parliament of Ukraine.

2. Evidences, written proof and other information provided to the Ministry, State Customs Service of Ukraine (hereinafter referred as "Customs") or Interdepartmental International Trade Commission (hereinafter referred as "Commission") under the provision of this Act shall be accepted, if executed in the state language of Ukraine.

Article 4. Powers of the Commission regarding protection of national industry against subsidized import

1. Pursuant to the provision of this Act the anti-subsidizing investigations shall be performed by the Ministry, Customs and Commission.

2. The procedure of establishment and operation of the Commission is described in the Act of Ukraine "On Protection of the National Producer against Dumped Imports".

3. At the hearings of the Commission shall be adopted a resolution on:

1. the initiation of an anti-subsidizing investigation;

2. making affirmative or negative determinations of the existence of an actionable subsidy and applied measures to establish the amount thereof;

3. affirmative or negative determinations of the existence of injury and the extent thereof;

4. determination of casual link between a subsidization and injury;

5. countervailing measures to be applied;

6. other matters within the competence provided by the provisions of this Act.

4. A resolution in the matters set out in sub-paragraph 6 of paragraph three of this Article shall, if required, be adopted under established working order by means of signing the draft resolution by the members of the Commission. To this end the Chairman of the Commission or his deputy shall give notice to the members of the Commission and offer them to express their opinion within the terms such opinion could be accounted but not exceeding the terms specified by the provisions of this Act.

Article 5. Terms

1. The terms of all and any actions under this Act shall be specified by the provisions of this Act, or established by the Commission or Ministry. Upon expiry of such terms the right to any action shall deem to be lost. Any documents, provided after expiration date, shall remain without consideration. The Commission or Ministry has the right to extend or recur the terms in the event of providing sufficient justification therefore.

2. The terms specified by this Act, 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 respective month and date of the year in question.

The terms calculated in months shall terminate at the respective date of the last month of the year 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 or from other day after occurrence thereof.

If expiration date falls on the day-off, the last day of such 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, Customs or Commission.

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

SECTION II. DEFINITION OF ACTIONABLE AND NON-ACTIONABLE SUBSIDIES

Article 6. Definition of a Subsidy

1. For the purpose of this Act a subsidy shall be deemed to exist if:

1. there is a financial contribution made by a government or there is any form of income or price support in the sense of Annexes from 1 to 4 and 7 of this Act;

2. a benefit is thereby conferred.

2. Anti-subsidizing investigation shall determine whether there is a financial contribution made by a government or whether:

1. a practice of the government involves a direct transfer of funds (e.g. grants, donations, loans, and equity infusion, etc.) potential transfers of funds or liabilities (e.g. loan, guarantees, etc.);

2. government revenue that is otherwise due, is forgone or not collected (e.g. fiscal incentives such as tax credits, delay in tax payment, etc.);

Exemptions of exports of a good from taxes, charges, etc., imposed on such a good, provided this good is intended for consumption in the domestic market of the exporting country, or reducing the amounts of such taxes and charges (mandatory payments), including duties, shall not be considered a subsidy, provided that such exemption or decrease are carried out in line with conditions stipulated in Annexes 1-3 to this Law;

(paragraph two of clause 2 of part two of Article 6 is amended pursuant to Law of Ukraine of 13 March 2012 N 4496-VI)

3. public body:

- provides goods or services for the subjects of legal economic relations other than general infrastructure, or purchase property (goods);
- entrust or direct a private body to carry one or more of the type of functions illustrated in sub-paragraphs 1 to 4 of the paragraph two of this Article, which would normally be vested in the government;
- direct a private body of the type of functions under the terms, that do not differ from those inherent to a public body.

3. If a financial contribution by a government or any form of income or price support have been established during anti-subsidizing investigation, it shall be clarified to what extent such forms correspond to those specified in the Annexes 1 to 4 and 7 of this Act.

Article 7. Specificity of countervailing measures to be applied

If an anti-subsidizing investigation establishes that a subsidy is specific, i.e. there are characteristic features distinguishing a non-actionable subsidy from an actionable subsidy pursuant to import to Ukraine, which enjoy privileges and benefit out of a subsidy, the countervailing measures shall normally apply.

Article 8. Actionable subsidies

1. In order to determine whether a subsidy is specific to an enterprise or industry or group of enterprises or industries (hereinafter referred as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

1. where the granting authority, or legislation, pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific, i.e. actionable;

2. where the granting authority, or legislation, pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of a subsidy, specificity shall not exist provided that:

- the eligibility is automatic;
- such criteria and conditions are strictly adhered to.

The objective criteria or conditions mean neutral criteria or conditions, pursuant to which disproportionately privileges are granted to certain enterprises at the expense of other ones, are alike to apply, namely the number of employees, the size of enterprise, etc. The criteria or conditions must be clearly spelled out in law, regulations, or other official documents, so as to be capable of verification.

2. Notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in sub-paragraphs 1 and 2 above, there are reasons to believe that the subsidy may in fact be specific. Such factors are:

- use of a subsidy programme by a limited number of certain enterprises;
- predominant use of a subsidy by certain enterprises;
- granting disproportionately large amounts of subsidy to certain enterprises;
- the manner, in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

In applying this sub-paragraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time, during which the subsidy programme has been in operation.

3. A subsidy, which is limited to certain enterprises located within a designated geographical region and jurisdiction of the granting authority will be specific.

4. Notwithstanding the regulations set out in paragraphs one and two of this Article the following subsidies shall be specific:

1. subsidies contingent in law or in fact, (whether solely or as one of several other conditions), upon export performance, illustrated in Annex 1 of this Act. Subsidies shall be treated as those depending upon the results of export performance, if relevant facts have proved that a subsidy granted in law do not depend upon the results of export performance, but in fact is connected with export performance or export earnings already due or to be due in the future;

2. subsidies contingent as one of several other conditions depending upon predominant use of national products.

5. Existence of fact of granting a subsidy to the enterprises, which perform exportation the of products shall not justify this subsidy to be actionable.

6. Establishment of, or introduction of changes to tax rates by the authorized body under established order shall not be treated as a specific subsidy.

7. Specificity of a subsidy, pursuant to Section II of this Act, shall be proved by sufficient evidence.

Article 9. Non-actionable subsidies

1. To determine whether a subsidy is non-actionable the following aspect shall be taken into consideration:

1. permitted extent of non-actionable subsidy, illustrated in paragraph three of this Article, shall be established pursuant to the total costs incurred as a result of realization of a certain project or performance of scientific and research work. Pursuant to the programmes of industrial research activities, where preliminary competent research work is performed, the permitted level of non-actionable subsidy shall not exceed arithmetic average of the permitted levels of non-actionable subsidies applied to two below categories, calculated on the basis of the total costs described in paragraph three of this Article;

2. the industrial research activities must be those planned or required research activities directed to achieve new knowledge for the purpose of development of new products, methods, technology or services, or modification thereof;

3. preliminary competent research activity shall mean arrangement of the results of industrial researches into plans, diagrams, drawings, patterns or models of new modified or improved products, methods, technology or services for the purpose of sale or use, including creation of the first specimen with no commercial use thereafter. This activity may include conception or design of other products, methods, know-how or services as well as demonstrative projects or initial representations, provided that such projects and representations shall not be for industrial or commercial use. Preliminary competitive research activity shall not involve introduction of insufficient or periodical changes to already existed products, production lines, methods and/or know-how, processing, services and other operations even though such changes could be considered as modifications.

4. the general programme of regional development shall mean the regional programmes of subsidization being a part of the programme of regional development closely connected with the national plan of the exporting country, where in the course of realization of such programmes, the subsidies shall not be granted.

5. neutral and objective criteria shall mean criteria, that confer no benefit to certain regions at the expense of those regions, which have managed to eliminate or decrease disparity in framework of regional development. To this end regional subsidy programmes shall establish the limits of a subsidy to be granted pursuant to each subsidizing project. These limits may be differentiated pursuant to different levels of development of the regions to be subsidized and shall be illustrated in figures of capital costs and costs incurred in creation of the working places. Granting of a subsidy, described in this sub-paragraph, shall be free and neutral to avoid any possibility of predominant use by certain enterprises or granting of disproportionately large amounts of subsidy to certain enterprises. These regulations shall also apply to criteria described in paragraphs one, two and five of the Article 8 of this Act.

2. Countervailing measures shall not apply to:

1. subsidies, which are not specific under provisions of paragraphs one, two and five of the Article 8 of this Act.

2. subsidies, which are specific under provisions of paragraphs one, two and five of the Article 8 of this Act, but which adhere to all conditions provided for in this Article.

3. a portion of a subsidy in case of offered undertakings illustrated in the Annex 4 of this Act.

3. The countervailing measures shall not apply to subsidies, which are granted for the purpose of research work performed by enterprises or higher education or research establishments on a contract basis together with other enterprises, if such assistance covers not more than 75% of the costs of industrial research or 50% of the costs of pre-competitive development activity, and provided that such assistance is limited exclusively to:

1. personnel costs (researchers, technicians and other supporting staff employed exclusively in the research activity);

2. costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

3. of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

4. additional overhead costs incurred directly as a result of the research activity;

5. other running costs, (such as those of materials, supplies and the like, incurred directly as a result of the research activity;

4. Assistance to disadvantaged regions, within the territory of the country of origin and/or exporting country, given in a general framework of regional development, to be considered as non-specific pursuant to criteria set out in paragraphs one, two and five of the Article 8 of this Act within eligible regions, shall be treated as a non-actionable provided that:

1. each disadvantaged region must be clearly designated contiguous geographical area with a definable economic and administrative identity;

2. the region is considered as disadvantaged on the basis of neutral and objective criteria indicating that the region's difficulties arise out of more than temporary circumstances. Such criteria shall be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

3. the criteria shall include a measurement of economic development, which shall be based on at least one of the following factors:

- one or either income per capita or household income per capita, or GNP per capita, which must not be above 85% of the average for the territory of a country of origin or exporting country;
- unemployment rate, which must be at least 110% of the average for the territory concerned.

Such measurement shall be performed within three-five years prior to initiation of an anti-subsidizing investigation. Such measurement may be a composite one and may include other factors.

5. Assistance to promote adaptation of existing facilities (including modification and/or development) new environmental requirements, which result in greater constraints and financial burden, shall be non-actionable, provided that the assistance:

1. is one time non-recurring measure;

2. is limited to 20% of the cost of adaptation;

3. does not cover the cost of replacing and operating the assisted investment, which must be fully borne by the concerned enterprise;

4. is directly linked to and proportionate to an enterprise's planned reduction of nuisances and pollution and does not cover any manufacturing cost savings which may be achieved;

5. is available to all enterprises, which can adapt the new equipment and/or production processes.

Such requirements to the environment must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

Available equipment means equipment and/or constructions, which at the date of adoption of the new requirements of the act to environmental protection, have been operated at least two years.

Section III. CALCULATION OF THE AMOUNT OF NON-ACTIONABLE SUBSIDY

Article 10. General principles of calculation of the amount of non-actionable subsidy

1. The amount of non-actionable subsidy shall be calculated pursuant to a benefit conferred to a recipient. Such benefit shall be established and calculated in the course of anti-subsidizing investigation.

The period of investigation, normally shall mean the last accounting year of a recipient, though other terms can be fixed with duration of not less than six months directly preceding the initiation of an anti-subsidizing investigation, provided that reliable financial and other evidences exist. The time-limits of investigation shall be fixed by the Ministry. In some cases the time-limits of investigation may exceed the period of one year.

For the purpose of this Act any method used by the Ministry to calculate the conferred benefit to the recipient shall be transparent and adequately explained.

Article 11. Calculation of benefit conferred to a recipient

Calculation of benefit conferred to a recipient shall be consistent with the following guidelines:

1. Government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for provision of risk capital) of private investor within the territory of a country of origin and/or exporting country;

2. A loan made by a government shall not be considered as conferring a benefit, unless there is a difference between the amount, which the enterprise receiving the loan pays on the government loan and a comparable commercial loan, which the enterprise could actually obtain on the market. In this case the benefit shall mean the difference between these two amounts;

3. a loan guarantee shall not be considered as conferring a benefit, unless there is a difference between the amount that the enterprise receiving the guarantees pays on a loan guaranteed by the government and the amount that the enterprise would pay for a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted to any difference in charges;

4. the provision of goods and/or property or services or purchase of goods or property for a government shall not be considered as conferring a benefit unless:

- the provision is made for less remuneration than is in practice in the like operations (adequate remuneration);
- or the purchase is made for more than adequate remuneration.

The adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods and/or property or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase and sale).

Article 12. Settlement. General provisions

1. The amount of actionable subsidy shall be calculated per unit of a subsidized product exported to Ukraine. After calculation of such amount the below payments can be deducted from the total amount of a subsidy:

1. registration (application) charges or other costs mandatory for acquiring the right to a subsidy or use of a subsidy;

2. export duty and/or other taxes and charges (mandatory charges), including duty, levied on products exported to Ukraine and intended to compensate for the subsidy;
(clause 2 of part one of Article 12 is amended pursuant to Law of Ukraine of 13 March 2012 N 4496 VI)

The interested party shall be required to substantiate the request for such a compensation.

2. If a subsidy is granted not pursuant to the volume of manufactured, processed, transported or exported goods, the amount of the actionable subsidy shall be established by means of division of the total amount of the subsidy to those figures relating to the level of the production, purchase or export of the goods in the course of an anti-subsidizing investigation.

3. If a subsidy is involved in purchase or subsequent purchase of the capital assets, the amount of actionable subsidy shall be calculated by means of allocation of such amount pursuant to the periods of usual duration of amortization of these funds in the appropriate branch of industry. Such calculated amount relating to the period of investigation, including any share in the capital assets purchased prior to such period, shall be allocated under provision of paragraph two of this Article.

For the purpose of the capital assets with no depreciation charges, a subsidy shall be put equal to interest-free loan and specified under provision of sub-paragraph 2 of the Article 11 of this Act.

4. If a subsidy is not involved in purchase of the capital assets, the amount of a benefit to be conferred during the period of investigation, shall be allotted for the period in question under provisions of paragraph two of this Article, unless specific circumstances provide for another period.

Section IV. PROCEDURE OF SETTLEMENT AND DETERMINATION OF INJURY. DEFINITION OF NATIONAL INDUSTRY

Article 13. Procedure of settlement and determination of injury

1. In the course of investigation, if not otherwise stipulated by this Act, the existence and extent of injury caused to national industry in one of below forms shall be established:

1. serious injury caused to national industry;

2. a threat to cause serious injury to national industry;

3. serious impediment to production and expansion of production of goods by national industry, which is subject to examination.

2. A determination of injury shall be based on positive evidence and involve an objective estimation of both:

1. the volume of the subsidized imports and effect of the subsidized imports on prices in the market of Ukraine;

2. the consequent impact of such imports on the national producers as a result of effect of the factors laid down in sub-paragraph 1 of this paragraph.

3. With regard to the volume of the subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports either in absolute terms or relative to production or consumption of like product in Ukraine;

With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider:

1. whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the national producer;

2. or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred.

For the purpose of sub-paragraph 1 of this paragraph all of these factors shall be considered by the Ministry to make an appropriate decision.

4. Where imports of a product from more than one country are simultaneously subject to anti-subsidizing investigation, the investigating authorities may cumulatively assess effects of such imports, if they determine that:

1. the amount of subsidization established in relation to the imports from each country is more than de minimis as defined in the paragraph four of the Article 19 of this Act;

2. the volume of imports from each country is not negligible;

3. a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and conditions of competition between the imported products and the like products originated from Ukraine.

5. The examination of the impact of the subsidized imports on the national industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry including:

1. incomplete elimination of the effects of previous subsidy on the national producer or indemnification of the national producer for a shoestring margin of dumping:

- the amount of actually granted subsidy;
- actual and potential decline in sale and production, in the size of profits or invested capital profits;
- actual and potential contraction in demand or partial contraction thereof;
- actual and potential decline in productivity and utilization of capacity;

2. factors affecting prices in Ukraine;

3. actual and potential negative effects on cash flow, inventories, employment, wages, economic development and conditions of attraction of investments.

For the purpose of sub-paragraph 2 of paragraph two of this Article all factors, illustrated in paragraphs four and five of this Article, shall be considered by the Ministry for making an appropriate decision.

6. Infliction of injury by the subsidized imports shall be proved by positive evidence in the course of anti-subsidizing investigation and provided to the Ministry. To this end it shall be proved that the volumes and levels of prices, laid down in paragraph three of this Article, cause the impact illustrated in paragraph five of this Article and that such consequent impact is serious.

The proof of casual link between subsidized import and injury caused to the national producer shall be justified by estimation of all evidences available at the Ministry's disposal, which relate to a subject of investigation.

7. The Ministry may also examine any known factors, which simultaneous effect cause injury to the national industry. The injury caused by such factors must be not attributed to the subsidized imports. In this event the interested party shall provide information on one or several following factors:

1. volumes and prices of non-subsidized imports;

2. contraction in demand or changes in the patterns of consumption;

3. trade restrictive practices of and competition between the foreign and Ukrainian producers;

4. developments in technology;

5. the results of export performance and productivity of national industry.

8. The effect of the subsidized imports shall be assessed in relation to the national production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sale and profits. If such separate identification of that production is impracticable, the effects of the subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

9. A determination of a threat of material injury shall be based on facts. The circumstances creating a situation, in which the subsidy would cause injury, must be clearly foreseen and imminent.

In making a determination regarding the existence of a threat of material injury investigating authorities should consider such factors as:

1. nature of the subsidy or subsidies in question and the trade effects likely to arise therefore;

2. a significant rate of increase of subsidized imports into the national market indicating the likelihood of substantially increased importation;

3. sufficient, freely disposable or an imminent, substantial increase in the capacity of the exporter indicating the likelihood of substantially increased subsidized exports to Ukraine, taking into account the availability of other export markets to absorb any additional exports;

4. whether imports entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;

5. inventories of the product being investigated.

The totality of the factors laid down in this paragraph must lead to Ministry's conclusion that further subsidized exports are imminent and that, unless protective action is taken, material injury would occur.

Article 14. Definitions of National Industry

1. For the purpose of this Act, the term "national industry" shall be interpreted as referring to the national producers as a whole of the like products or to those of them, whose collective output of the products constitutes a major proportion of the total production in Ukraine of those products along with the peculiarities stipulated by this Article and paragraph eight of the Article 15 of this Act. For the purpose of determination of the national industry the following factors shall be taken into consideration:

1. when producers of a like product of Ukraine are related to the exporters or importers of the allegedly subsidized product, the term "national industry" may be interpreted as referring to the rest of the producers, except those specified above;

2. in exceptional circumstances, the territory of Ukraine may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:

- the producers within each market sell all of their production of the product in question in that market;
- the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in Ukraine. In such circumstances, injury may be found to exist, even where a major portion of the total domestic industry is not injured, provided there is concentration of subsidized imports into such an isolated market and provided further that the subsidized imports cause injury to the producers of all or almost all of the production within such market.

2. The producers shall be related to the exporters or importers, provided that one (or several) below conditions exist:

1. one of them directly or indirectly controls the other;

2. both of them are directly or indirectly controlled by a the third person;

3. together they directly or indirectly control a third producer so, that the effect of the relationship is so that the activity (inactivity) of such producer differs from non-related producers which are not bound to the exporters, importers and producers described in the sub-paragraphs 1 and 2 of this paragraph.

The producer (exporter, importer) shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Section V. INITIATION OF ANTI-SUBSIDIZING PROCEDURE AND ANTI-SUBSIDIZING INVESTIGATION

Article 15. Initiation of anti-subsidizing procedure

1. The procedure of anti-subsidizing investigation, for the purpose of establishment of the existence of any alleged subsidy, its amount and effect, shall be initiated by the Ministry upon written application by or on behalf of the national industry except as laid down in paragraph ten of this Article.

The application in writing shall be provided by the national producer, physical or legal entity acting on behalf of the national producer.

The application shall be served on the Ministry by the registered mail or delivered to the Ministry against receipt. The Ministry shall provide the Commission with a copy of the application to be seen by all its members.

The next day following the receipt and filing of the application in the Ministry shall be the first working day the application deems to be provided.

Where the application has not been served directly on the Ministry under the order provided in sentence three of this paragraph, or there exists an appropriate body of Ukrainian government, which disposes of relevant evidence of the existence of the subsidy and injury, the body in question shall immediately serve on, or make an application to the Ministry. The same right to make application to the Ministry shall enjoy the trade union of the employees of the national producer's enterprise.

2. The application, made under the provisions of the paragraph one of this Article, shall contain evidence of the existence of alleged actionable subsidy (including, if possible, its amount), alleged injury and casual link between them. The application shall contain such information as is reasonably available to the applicant on the following:

1. identity of the applicant, composition of the applicant, proof of capability of the persons in question, the volume and value of the production of the like product by the applicant in Ukraine. Where a written application is made on behalf of the national industry, the application shall identify:

- the industry, on behalf of which the application is made, a description of the volume and value of production of the like product in Ukraine;

- a list of all known national producers of the like product (or associations of national producers of the like product) and to the extent possible, a description of the volume and value of production of the like product in Ukraine.

2. a complete description of the allegedly subsidized product, the names of the country or countries of origin or export in question;

3. the identity of each known exporter or foreign producer and a list of known persons (physical or legal) importing the product in question;

4. evidence with regard to the existence, amount and nature of the subsidy in question and evidence that a subsidy is actionable;

5. evidence, including information on evolution the volume of the allegedly subsidized imports and the effect of these imports on prices of the like product in the market of Ukraine and consequent impact of the imports on the national industry, as demonstrated by relevant factors and indices having a bearing on the state of the national industry such as those listed in paragraphs three and five of the Article 13 of this Act.

3. Upon receipt of the application under provisions of the paragraph one of this Article, the Ministry shall initiate investigation, reviewing the accuracy and adequacy of the evidences provided in the application, to determine whether the evidence is sufficient to justify the opening of a countervailing duty investigation pursuant to the paragraph thirteen of this Article.

4. An investigation shall be initiated for the purpose of determination whether the allegedly subsidies are specific pursuant to the paragraphs one and two of the Article 8 of this Act.

5. An investigation shall be also initiated for the purpose of determination whether non-actionable subsidies meet the requirements of the conditions listed in the paragraphs one, three, four or five of the Article 9 of this Act.

6. If a matter of a subsidy, granted in the framework of the subsidizing programme, has been passed to the Commission of subsidies and countervailing measures of WTO under the terms of the Article 8 of the GATT Agreement of 1994 on subsidies and countervailing measures before due introduction of the programme in question, and where the Commission has not determined whether such subsidy meets the requirements of the provisions thereof, the countervailing duty investigation, pursuant to the subsidy in question, shall be initiated only if the fact of violation of the provisions of the Article 8 of said Agreement was established by the WTO authority governing the settlement of disputes or arbitration, as provided in paragraph five of the Article 8 of such Agreement.

7. An investigation shall be also initiated pursuant to the measures of national support to the agriculture producers of the exporting countries listed in the Annex 4 of this Act, provided that these measures incorporate a component of a subsidy in question under the terms of the Article 6 of this Act, in order to determine whether such measures meet the requirements of the provisions of the above Annex.

8. The application shall be considered to have been made by or on behalf of the national industry, if it is supported by those national producers, whose collective output constitutes more than 50% of the total production of the like product produced by the portion of the national producers expressing either support for or opposition to the application. However, no investigation shall be initiated when national producers expressly supporting the application account for less than 25% of total production of the like product produced by the national industry. If, at the date of making application and serving it on the Ministry, the applicant is supported by those national

producers, whose collective output constitutes 25% or more (but less than 50%) of the production of the like product produced by the national industry, the applicant shall, in the course of anti-subsidizing procedure, get support (or direct or indirect opposition to) of other producers to establish whether this application is supported by those national producers, whose collective output constitutes more than 50% of the total production of the like product by the national producers prior to initiation of an anti-subsidizing investigation.

9. The Ministry and Commission shall avoid any publicizing of the application for initiation of an anti-dumping investigation, prior to making decision on initiation of such investigation. However, after receipt of a properly documented application and before proceeding to initiate an anti-dumping investigation, the Ministry shall by order of the Commission give a notice to the competent authorities of the interested exporting country on initiation of an anti-subsidizing procedure. In the circumstances the Ministry shall serve on the applicant the confidential request to direct additional copies of non-confidential versions of the application to be dealt with pursuant to the paragraph fifteen of this Article.

10. In special circumstances, laid down in paragraph five of this Article, the Commission may decide to initiate an anti-subsidizing investigation without receiving a written application by or on behalf of a national industry, provided that the Commission has sufficient evidence of the existence of a subsidy, injury and casual link as described in paragraph two of this Article, to justify initiation of an investigation.

The Ministry shall initiate the investigation in question if the Commission so decided.

An investigation shall not be initiated to the imports of the countries - the members of WTO, the volume of which is less that one % of the total volume of consumption in Ukraine of the product, which is subject to anti-subsidizing procedure, if collective volume of such imports from the aforementioned countries is less than three % of the consumption volume in question.

11. The sufficient evidence of both subsidy and injury shall be considered by the Ministry simultaneously in the decision, whether or not to initiate an anti-subsidizing investigation.

12. An application shall be rejected, if the authorities concerned are satisfied that there is no sufficient evidence of either subsidization or injury to satisfy proceeding with the case.

An applicant may withdraw his application during the course of anti-subsidizing procedure prior to initiation of the investigation. In this case an application is considered as if not made.

13. The Ministry shall provide a report to the Commission on the results of the anti-subsidizing procedure. The decision on initiation of the investigation shall be made by the Commission on request of the Ministry, normally within the term of 30 days from the date of making an application. Such decision shall be made on the basis of sufficient evidences substantiated by actual data obtained in the course of anti-subsidizing procedure. A decision on initiation of the investigation made by the Commission shall authorize the Ministry to:

1. immediate initiation of the anti-subsidizing investigation;

2. to publish a notice on initiation of an investigation in the press of the Cabinet of Ministers of Ukraine (hereinafter referred as newspaper).

If upon request of the Ministry the Commission decides to terminate the anti-subsidizing procedure because of insufficient evidence to substantiate the application, it shall authorize the Ministry to notify the applicant of such decision within 45 days from the date of making application.

14. The notification of initiation of an anti-subsidizing investigation shall contain:

1. the information on initiation of an anti-subsidizing investigation;

2. description of the product in question and the names of the interested countries;

3. brief report (hereinafter referred as summary) on information obtained by the Ministry;

4. reference that all useful information on the investigation in question shall be directed to the Ministry;

5. terms within the frames of which:

- the interested parties can give a notice to the Ministry on their concern in such investigation;
- the interested parties can provide written comments on such investigation and other relevant information. Such comments and other information shall be accounted by the Ministry in the course of an investigation, if provided for the Ministry in due terms of notification;
- the interested parties shall have the right to require the hearings to be held at the Ministry pursuant to the paragraph six of the Article 16 of this Act.

15. The Ministry shall notify the exporters, importers, the known associations of importers or exporters, competent authorities of the exporting country and an applicant of initiation of anti-subsidizing investigation. For the purpose of this Act with regard to protection of the confidential information, the Ministry shall provide the full text of the written application to the known exporters, to the competent authorities of the exporting country and make it available upon request to other interested parties involved. If the number of the interested exporters is too great, the Ministry shall provide the full text of the written application to the competent authorities of the exporting country only.

16. An anti-subsidizing investigation shall not hinder the procedures of customs clearance.

Article 16. Anti-subsidizing investigation

1. Pursuant to the decision of the Commission, the Ministry shall initiate anti-subsidizing investigation and perform such investigation together with other executive bodies of the government of Ukraine.

2. An investigation shall be carried out for the purpose of determination of the existence of the subsidy and injury. For the purpose of determination, in the course of investigation, of the facts of subsidization, the term of investigation shall be fixed pursuant to the provisions of paragraph one of the Article 10 of this Act. Any information relating to the period other than specified above shall not be accounted.

3. The Ministry, along with the notice on initiation of the investigation, shall provide to the known exporters, importers, other parties, which the Ministry considers to be involved in such investigation, or to the competent authorities of the exporting countries, the questionnaires for the purpose to receive information and evidence to be used during such investigation.

The interested parties shall be given at least thirty days from the date of delivery to respond.

The questionnaire shall be deemed to be delivered within 4 days after mailing it to the recipient or diplomatic representative of the exporting country.

The term for giving reply may be extended by the Ministry pursuant to the terms fixed for performance of such investigation, provided that the interested parties shall present reasonable evidence for such extension.

4. The Ministry shall require the executive bodies of the government of Ukraine to provide information and materials needed to carry out an anti-subsidizing investigation. On request of any member of the Commission the Ministry shall provide him or the Commission with non-confidential resume in a summery form received from such bodies.

5. During the course of the investigation the Ministry shall have the right to:

1. authorize other executive bodies of the government of Ukraine to perform inspection or verification of the activity of the importers, traders and Ukrainian producers;

2. carry out verification of information received from the interested parties involved in an investigation, unless the interested party or officially notified competent authorities of the interested country object to the investigation. For this purpose the Ministry shall determine the terms and methods of performance of such inspection and verification.

The executive bodies of the government of Ukraine shall take all necessary measures to satisfy such requirements. The inspections and verifications shall be also executed by the authorized officers of the Ministry.

6. The interested parties, which have notified the Ministry about their intention to be involved in an investigation pursuant to paragraph fourteen of the Article 15 of this Act, shall have the right to apply to the Ministry with request the hearings to be held at the Ministry in the matter of an anti-subsidizing investigation, provided that:

1. they required such hearings to be held within the terms fixed in the newspaper's notice on initiation of an investigation;

2. they have proved to be the interested parties that could be affected by the consequent impact of such investigation;

3. they have special reasons for such hearings to be held.

7. On request of the parties, which have informed the Ministry on their wish to be involved in an investigation pursuant to the paragraph fourteen of the Article 15 of this Act, and on request of the competent authorities, the Ministry shall provide opportunity for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take into account the need to preserve confidentiality pursuant to available information.

There shall be no obligation on any party to attend consultations, and failure or refusal to do so shall not be prejudicial to that party's case.

Oral information, provided to the interested parties pursuant to the paragraphs seven and eight of this Article, shall be taken into account by the Ministry in the course of an investigation, only insofar as it is subsequently reproduced in writing.

8. The applicants and interested parties, which have notified the Ministry about their involvement in an investigation, pursuant to the paragraph fourteen of the Article 15 of this Act, and the respective competent authorities shall, on request, be provided opportunities to see all information, which is relevant to the presentation of their cases, that is not confidential, with exception of the confidential official documents of the Ministry and Commission, provided that such information is:

1. related to protection of their interests;

2. not confidential pursuant to the provisions of the Article 31 of this Act;

3. used in the anti-subsidizing investigation.

9. Any information provided by the interested parties for making affirmative or negative determination, whether a subsidy and injury exist shall be verified by the Ministry, except in those cases described in the Article 30 of this Act.

The information and evidences, supplied to the Ministry by one of the interested parties in the course of an investigation, shall be provided by such party to all other interested parties. If the relevant information and evidences are not supplied to the Ministry or to the interested parties or it is impossible to verify such information and evidences, the information and evidences in question shall be disregarded in the course of the investigation.

10. Investigations shall be concluded within one year after initiation thereof.

The time-limits for conducting investigation may be extended by decision of the Commission but in no case shall be more than 14 months.

11. In the course of the investigation the Ministry shall provide the competent authorities with opportunities to continue consultations in order to satisfy themselves as to the accuracy of the facts and to arrive at a mutually acceptable solution in this respect.

Section VI. COUNTERVAILING MEASURES

Article 17. Provisional measures

1. Provisional measures may be applied only if:

1. an anti-subsidizing procedure has been initiated pursuant to the provisions of Article 15 of this Act;

2. an investigation has been initiated pursuant to the provisions of Article 16 of this Act;

3. a public notice on initiated anti-subsidizing procedure has been given in the newspaper;

4. interested parties have been given adequate opportunities to submit information and comments pursuant to the paragraph fourteen of the Article 15 of this Act;

5. during anti-subsidizing investigation the Ministry has made a preliminary affirmative determination that a subsidy exists and that there is material injury to a domestic industry caused by subsidizing imports, which enjoy prohibited subsidy in Ukraine;

6. national interests judge such measures necessary to prevent serious injury being caused.

2. Provisional measures shall not be applied sooner than 60 days and later than nine months from the date of initiation of investigation.

3. If the intention of the Ministry to verify pertinent data under the provisions of Articles 8 and 9, paragraph nine of the Article 16 and Articles 28 and 30 of this Act have not been accepted by a importers, exporters or manufacturers, which are subject to an investigation, the investigating authorities shall establish, not later than 75 days from the date of the initiation of an investigation, whether provided evidences have been justified to make preliminary determination of the existence of an actionable subsidy and injury.

Not later than 10 days before the possible date of application of the provisional measures the interested parties may be given a notice on justification why the Ministry requires the Commission to review and apply the provisional measures. The interested parties may direct to the Ministry their comments in this respect. Any comments of the interested parties shall be reviewed by the Ministry, only if supplied not later than 5 days prior to the date of making decision by the Ministry to apply provisional measures. The reasons for non-acceptance of the comments shall be described in the appropriate decision of the Commission.

To this end the Commission, having accounted the recommendations of the Ministry, may decide to apply provisional measures not later than 90 days of the date of initiation of an anti-subsidizing investigation.

4. If any member of the Commission requires the immediate application of the provisional measures by the Commission, pursuant to the requirements of the paragraphs one and two of this Article, the Ministry shall:

1. make preliminary determination with regard to the existence of a fact of subsidy and injury and whether it is reasonable to apply provisional measures not later than at the tenth working day from the date of receipt of duly executed request of a member of the Commission;

2. give a notice to the Commission with regard to such determinations proposing to fix the date the hearings of the Commission to be held in this respect.

5. Before termination of an anti-subsidizing investigation, the Ministry shall be satisfied that there is sufficient evidence provided by the applicants, interested parties, executive bodies of the Ukrainian government of the existence an actionable subsidy, infliction of injury and justified reasons for application of the provisional measures. The Ministry shall give a notice to the Commission with regard to the determinations in question.

Not later than 10 days prior to the expected date of application of the provisional measures, the interested parties may be given a notice on justification why the Ministry requires the Commission to review and apply the provisional measures. The interested parties may direct to the Ministry their comments in this respect. Any comments of the interested parties shall be reviewed by the Ministry, only if supplied not later than 5 days prior to the date of making decision by the Ministry to apply provisional measures. The reasons for non-acceptance of the comments shall be described in the appropriate decision of the Commission.

On the basis of the recommendations made by the Ministry, the Commission may decide to apply provisional measures not later than nine months from the date of initiation of an anti-subsidizing investigation.

6. The determinations of the Ministry to reject application of the provisional measures shall not be ignored, where the decision with regard to such measures has been made in the following cases:

1. upon reasonable request provided by a member of the Commission;

2. upon reasonable request provided by an interested national producer;

3. with regard to an initiative of the Ministry pursuant to new revealed evidences proving the existence of the subsidization and injury.

7. The provisional measures may be applied by means of imposition of the provisional countervailing duties. The rate of provisional countervailing duty shall be determined in the appropriate resolution of the Commission.

The rate of provisional countervailing duty shall be determined by one of the methods below:

- in % pursuant to duty cost of the product under anti-subsidizing investigation. The duty cost shall be calculated pursuant to the basic terms of delivery CIF- the boarder of Ukraine;

- as a difference between minimum value and duty cost of the product calculated pursuant to the basic terms of delivery CIF- the boarder of Ukraine;

Minimum price shall mean the sales value of the product in question, which does not cause injury to the national producer. The minimum value shall be calculated pursuant to the paragraph nine of this Article.

8. Minimum value shall be calculated as follows:

1. The Ministry shall calculate the value of the product under anti-subsidizing investigation pursuant to the practice in sales of such product in the market of Ukraine within the basic period. The Ministry shall calculate the weighted average value for basic period on the basis of weekly or monthly prices. The Ministry shall make one time calculation using relevant information provided by the Customs, the applicant or the interested party, or using the like information from other sources. The basic period shall mean the period of duration from six months to five years, preceding the period of investigation;

2. The Ministry shall establish the actual current market price of the product under anti-subsidizing investigation based on the price practiced in the market of Ukraine for the period of

investigation, anti-subsidizing investigation and the period of application of the provisional measures within four weeks preceding 25th day of each month;

3. The Ministry shall calculate the variable value in % that equals to a difference between prices described in sub-paragraphs 1 and 2 of this paragraph divided to the price of the product that have been practiced in the market of Ukraine;

4. The Ministry shall establish the price of a product of the national producer within the basic period using information received from such producer and/or from other sources in the course of investigation;

5. an adjustment in price of a product of the national producer shall mean the variable value in % calculated pursuant to the sub-paragraph 3 of this paragraph and multiplied by the price value of a product of the national producer calculated pursuant to sub-paragraph 1 of this paragraph;

6. the minimum price for the next month shall be established by means of increase in a price of the product of the national producer for the basic period by the value of the above adjustment;

7. the Ministry shall calculate the minimum price on the base of the data available by 25th day of each month;

8. the Ministry shall provide the Customs with information on the minimum price not later than on 1st day of each month;

9. the established minimum price, pursuant to this paragraph, shall be effective during the whole period of application of the provisional anti-subsidizing measures;

10. where the minimum price is calculated for the five year period the Ministry shall use the method of calculation of the minimum price pursuant to sub-paragraphs from 1 to 9 of this paragraph, adjusting necessary data to the five year period of the provisional measures to be applied.

9. A provisional countervailing 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 Act.

10. The rate of a provisional countervailing duty shall not exceed the preliminarily calculated total amount of the actionable subsidy and shall be less than the amount of the subsidy, if such increases would be adequate to those of the national industry.

A provisional countervailing duty shall be levied in the appropriate amounts in each case, on a non-discriminatory basis and notwithstanding the country of export, if the decision of the Commission determines that the imports of the products in question is subject to application of the provisional measures.

In such decision the Commission shall identify each supplier of the products, the imports of which is subject to application of the provisional measures. Where an anti-subsidizing investigation is performed with regard to the products imported by the producers of one and the same country and it is impracticable to identify all such suppliers, in its decision, the Commission shall identify the exporting country. Where an anti-subsidizing investigation is performed with regard to the products imported by several producers from more than one country, in the decision of the Commission shall be identified either all suppliers or, if it is impracticable, all exporting countries.

In its decision, the Commission shall establish the rate of provisional countervailing duty imposed on the product of each supplier (producer, exporter, importer), the imports of which to the Ukrainian market, is subject to application of countervailing measures, or if it is impracticable to identify all suppliers of such products, all exporting countries shall be identified.

11. A provisional countervailing duty shall be imposed by the customs authorities of Ukraine at the rate and under terms established by a decision of the Commission with regard to the provisional countervailing measures to be applied. A provisional countervailing duty shall be

imposed irrespective of payments of other taxes and charges (mandatory payments), including duty, administered at the time of importation of certain categories of goods to the customs territory of Ukraine.

(part eleven of Article 17 is amended pursuant to the Law of Ukraine of 13 March 2012 N 4496-VI)

12. The application of provisional countervailing measures shall be limited to as short a period as possible, not exceeding four months.

(part 12 of Article 17 is in the wording of the Law of Ukraine N 252-VI of 10 April 2008)

13. A decision, pursuant to extension of the term of application of the provisional measures, shall be made at the hearings of the Commission on recommendation of the Ministry by a qualified majority vote.

14. By order of the Commission, the Ministry shall inform the Cabinet of Ministers of Ukraine on a decision made pursuant to the provisions of this Article.

15. The application of the provisional measures shall not hinder customs clearance of the products under investigation.

Article 18. Undertakings of the interested parties

1. Proceedings of an anti-subsidizing investigation may be terminated without the imposition of provisional measures or countervailing duties upon receipt of satisfactory voluntary undertakings under which:

1. the government agrees:

- to eliminate the subsidy;
- or to limit the subsidy;
- or to take other measures with regard to the effects thereof.

2. the Ministry has received satisfactory voluntary written undertakings of the exporter to revise his prices or terminate exportations of products under investigation to the region of Ukraine using the prohibited subsidy to satisfy the Ministry and the Commission, that the effect of such subsidy, pursuant to this Act, shall be eliminated;

3. the Ministry provides the Commission with the undertakings of the exporter along with the appropriate recommendations to the exporter to revise his prices. A decision on the exporter's undertakings shall be made by the Commission. The increase in prices with respect to the exporter's undertakings to terminate subsidized importation:

- shall not be higher than it is needed to recover the amount of the prohibited subsidy;

- however, shall not be less than the amount of the above subsidy, where such increase would be adequate to remove the injury caused to the national industry by the subsidized imports.

The interested parties shall be recommended to give undertaking, provided that the Commission has made the decision to apply the provisional measures.

Upon receipt of such voluntary undertaking the Ministry shall establish whether it meets the requirements of sub-paragraphs 1 and 2 of this paragraph.

At the hearing the Commission may decide to accept such undertakings.

Where, pursuant to paragraphs one and two of the Article 14 of this Act, the total number of the producers of a certain region has been identified as the national producer, the exporters shall be given an opportunity to offer importation of their products to these separate markets pursuant

to the provisions of this Article. If the Commission establishes, that the application of the provisional measures protects national interests, the regional interests shall be also accounted.

2. Where the mentioned above undertaking is insufficient to remove the consequent impact of the subsidization, or not offered within 60 days from the date the Commission has made the decision to impose the provisional countervailing duties, or due to the circumstances laid down in the paragraphs nine and ten of this Article, the Commission shall make a decision to impose the provisional and definitive countervailing duties within the whole territory of Ukraine. In such cases the Commission shall establish in such decision the producers or exporters of the products, the countervailing duties to be imposed thereon, which have been identified in the course of anti-subsidizing investigation.

Undertakings to terminate the subsidized imports shall be suggested by the Ministry but the authorities and/or interested parties shall be not liable to accept them. The fact, that authorities and/or interested parties do not offer undertakings pursuant to termination of the subsidized imports, or oppose to the appropriate recommendations of the Ministry thereof, shall in no way prejudice the performance of anti-subsidizing investigation. However, the Ministry is free to determine that a threat of injury more likely if subsidized imports continue.

Undertakings to terminate the subsidized imports shall be proposed to the interested parties by the Ministry, when the Commission has decided to apply the provisional measures.

Undertakings shall not be offered after expiration date laid down in the paragraph five of the Article 32 of this Act, if not otherwise provided for the extraordinary circumstances.

3. Undertakings of the exporters to terminate the subsidized imports need not be accepted, if the Ministry considers their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including the general policy as well.

Should the case arise and not later than 15 days prior to expiration date of application of the provisional measures, the interested exporters shall be provided with reasons, for which the Ministry has recommended to the Commission to consider acceptance of an undertaking as inappropriate. Such exporters shall be given an opportunity to make comments thereon, if provided to the Ministry, not later than 10 days prior to expiration date of application of the provisional measures.

In its final decision the Commission shall provide the reasons for non-acceptance of the exporter's comments to be accounted.

4. The exporters, who offer the undertakings, shall present a non-confidential version of such undertaking to be provided by the Ministry to other interested parties to be seen.

5. Where, after consultations held between the Ministry and interested parties, the exporters offer the undertakings to terminate the subsidized imports, the Ministry shall approve the preliminary determination to terminate anti-subsidizing investigation and submit a report on the results of such consultations, recommending the Commission to make decision on termination of an anti-subsidizing investigation without application of the provisional measures to the product imported to Ukraine by the interested parties, whose undertakings have been accepted.

The decision of the Commission on acceptance of undertakings of the exporter to terminate subsidized import and on termination of an anti-subsidizing investigation shall be made by a qualified majority vote within one month from the date of acceptance of recommendations provided by the Ministry to terminate such investigation. An anti-subsidizing investigation shall deem to be terminated, if within a period of one month from the date of submission of such report, the Commission has not decided otherwise.

If the Commission decided to terminate an anti-subsidizing investigation, the Ministry shall immediately provide the Commission with a detailed report on the results of consultations, pursuant to application of the provisional measures.

6. If the undertakings of an exporter to terminate the subsidized imports are accepted, the Ministry, normally, shall continue performance of anti-subsidizing investigation to be terminated. If

a negative determination of subsidization or injury is made, the undertaking shall automatically lapse, except in cases, where such determination is due in large part to the existence of an undertaking. In such cases the Ministry may require an undertaking be maintained for a reasonable period needed to eliminate the consequent impact of the subsidized imports.

Where, an affirmative determination of subsidization and injury is made by the Ministry, the undertaking shall continue to be consistent with the decision of the Commission.

The Ministry shall immediately provide the Commission with the report on the decision made pursuant to the provisions of this paragraph. The Commission may approve such decision at the hearings by a qualified majority vote.

7. The Ministry shall have the right to require any competent authorities or exporter, from whom undertakings to terminate the subsidized imports have been accepted, to provide periodically information to the fulfilment of such undertakings, and to permit verification of pertinent data. Renunciation of fulfilment of such undertakings by the competent authorities and/or exporter shall be considered as violation thereof.

8. If in the course of an anti-subsidizing investigation an undertaking of the exporter to terminate the subsidized imports is accepted pursuant to the Section VII of this Act, such undertaking shall be maintained from the date of termination of an anti-subsidizing investigation in question.

9. If the Ministry establishes violation or nullification of undertakings by a party, the Ministry shall draw up a report with recommendation to apply the provisional measures and submit it to the Commission to be reviewed. At the hearings, the Commission shall review the report and, pursuant to the Article 19 of this Act, may decide by a simple majority vote to impose the definitive countervailing duty, based on the facts established in the course of an anti-subsidizing investigation, where undertaking of the exporter to terminate the subsidized imports has been accepted. The decision to apply the definitive countervailing measures shall be made if:

1. a final determination of the existence of the subsidy and injury has been made by the Commission pursuant to the results of the investigation;

2. the exporter and/or competent authority, except the cases, where undertakings have been nullified, shall have an opportunity to submit to the Commission their comments to be accounted at the hearings of the Commission.

10. At the hearings the Commission shall review the report of the Ministry and other provided information and make decision with regard to available data and provisions of the Article 17 of this Act on immediate application of the provisional measures:

1. if there is sufficient evidence that the exporter and/or competent authority violate their undertakings to terminate the subsidized imports;

2. if the exporter and/or competent authority violate their undertakings to terminate the subsidized imports, where anti-subsidizing investigations, in the course of which such undertakings have been offered, still continue.

The decision of the Commission on immediate application of the provisional measures shall be made by a simple majority vote.

Article 19. Termination of anti-subsidizing procedure without application of the countervailing measures. Application of the definitive countervailing measures

1. If the application is withdrawn, an anti-subsidizing procedure shall terminate with no countervailing measures to be applied, except in cases, where termination of such procedure contradicts to the national interests.

2. If application of the provisional countervailing measures is not needed, nor refusal to apply such measures is opposed by the members of the Commission, the latter on recommendation of

the Ministry shall terminate the anti-subsidizing procedure or investigation. The decision in question shall be made by a qualified majority of vote.

Pursuant to this paragraph, the Ministry shall draw up a report, notify the representatives of the country of origin and/or exporting country and publish an appropriate announcement in the newspaper setting out the basic determinations and summaries of the reasons for termination of the anti-subsidizing investigation without application of the countervailing measures.

3. Pursuant to the paragraph five of this Article an anti-subsidizing procedure shall be immediately terminated by the order of the Commission on recommendation of the Ministry without application of the countervailing measures, provided that an actionable subsidy is minimum, or the volume of actual or potential subsidized imports or actual or potential injury are insufficient.

4. For the purpose of an anti-subsidizing investigation, initiated pursuant to the paragraph thirteen of the Article 15 of this Act, the injury shall be insufficient, where the amount of the share of the market of importation of the like products introduced to commerce of Ukraine, is less than the amounts laid down in the third sentence of the paragraph ten of the Article 15 of this Act.

In an anti-subsidizing investigation with regard to the imports from the developing countries, the members of WTO, the volume of the subsidized imports shall be treated as insufficient, provided that this volume is less than four % of the total volume of importation of the like product introduced to commerce of Ukraine from any of a developing country – the member of WTO.

However, the countervailing measures shall be applied, where the volume of the subsidized imports exceeds nine % of the total volume of the importation of the like products introduced to commerce of Ukraine from several developing countries, the members of WTO, even if their respective shares in imports to Ukraine are less than four %.

5. In an anti-subsidizing investigation the amount of actionable subsidy shall be regarded as minimum, only if it is less than one % of the total cost of the product under investigation, except:

1. in an anti-subsidizing investigation, pursuant to importation of the products from the developing countries, the minimum threshold of a subsidy shall be the amount of the imports not exceeding two % of the total cost volume of the product under investigation;

2. for the countries, the members of WTO, described in the Annexes 5 and 6 to this Act and for those developing countries not applying subsidization pursuant to the paragraph three of the Article 8 of this Act, the minimum threshold of a subsidy shall be three % of the total cost volume of the product under investigation.

If application of the provisions of this subparagraph depends upon nullification of the exporting subsidies, such provision shall apply from the date of notification of the WTO Commission for subsidization and countervailing measures unless one of the aforementioned developing countries would grant an exporting subsidy.

To this end an anti-subsidizing investigation shall be carried out if:

- the amount of an actionable subsidy is above its minimum level established for certain exporters;
- certain exporters continue to be subject to anti-subsidizing procedure and may be subject again to an anti-subsidizing investigation with regard to importation of products from the country in question under the provisions of the Section VII of this Act.

Such anti-subsidizing investigation shall terminate without application of the countervailing measures.

6. The principles of application of the countervailing measures shall be as follows:

1. definitive countervailing measures shall be applied, where the Ministry has made the final affirmative determination of the existence of the prohibited subsidy and injury, being a consequent

impact of such subsidy, and where the application thereof is required with regard to protection of the national interests pursuant to the provisions of the Article 35 of this Act;

2. when provisional countervailing measures are applied, the Ministry shall provide the Commission with proposals to apply the definitive countervailing measures one month prior to the expiration date of application of the provisional measures;

3. on recommendation of the Ministry, the Commission shall decide whether to levy the definitive countervailing duties and establish the rate thereof, which must not exceed the amount of preliminarily calculated total amount of the actionable subsidy and be less than the amount in question, provided that such rate shall be sufficient to avoid injury caused to the national producer;

4. the definitive countervailing measures may be applied in a form of the levied definitive countervailing duty. The rate of the definitive countervailing duty shall be established in the appropriate decision of the Commission. The rate of the definitive countervailing duty shall be established:

- in % pursuant to duty cost of the product under anti-subsidizing investigation. The duty cost shall be calculated pursuant to the basic terms of delivery CIF- the boarder of Ukraine;
- as a difference between minimum price and duty cost of the product calculated pursuant to the basic terms of delivery CIF- the boarder of Ukraine. To this end the minimum price shall be calculated pursuant to the paragraph eight of the Article 17 of this Act.

7. The definitive countervailing duty shall be levied in the appropriate amounts in each case, on a non-discriminatory basis on imports from any exporting country, if established that the import in question enjoys an actionable subsidy and causes injury, provided that no undertakings have been offered by the exporter pursuant to the provisions of this Act.

In such decision the Commission shall identify each supplier of the products, the imports of which is subject to application of the definitive countervailing measures. Where an anti-subsidizing investigation is performed pursuant to the products imported by the producers of one and the same country and there is no possibility to identify all such suppliers, in its decision the Commission shall identify the exporting country. Where an anti-subsidizing investigation is performed pursuant to the products imported by several producers from more than one country, in such decision the Commission shall identify either all suppliers or, if it is impracticable, all exporting countries.

In the decision the Commission shall establish the rate of the definitive countervailing duty levied on the product of each supplier (producer, exporter, importer), the imports of which to the Ukrainian market is subject to application of the countervailing measures, or if it is impracticable to identify a supplier (producer, exporter, importer) of such products a rate of the definitive countervailing duty shall be established for the exporting country.

8. In cases, where the Ministry makes use of selective methods in the course of an anti-subsidizing investigation described in provisions of the Article 29 of this Act, a countervailing duty levied directly on exporters or producers of the products imported to Ukraine, who have notified the Ministry of their involvement, pursuant to the provisions of the Article 29 of this Act, shall not exceed weighted average amount of an actionable subsidy, established for comparable exporters or producers. Pursuant to this paragraph the Ministry shall not account zero and insufficient values, values calculated in cases illustrated in the Article 30 of this Act. Individual rates of a countervailing duty shall be imposed in cases of direct imports to Ukraine by the exporters or producers and where selective methods of an anti-subsidizing investigation are applied under the provisions of the Article 29 of this Act.

9. A definitive countervailing duty shall be paid at the rate and under the terms established in the decision of the Commission with regard to application of the definitive countervailing measures. A definitive countervailing duty shall be paid irrespective of other taxes and charges (mandatory payments) including duties, which are normally collected from the imports in Ukraine.

(part nine of Article 19 is amended pursuant to the Law of Ukraine of 13 March 2012 N 4496-VI)

Article 20. Specificity in application of the countervailing measures

1. The provisional and definitive countervailing measures shall only be applied to products, which enter for consumption in Ukraine and where the Commission decides to apply such measures and the appropriate decision enters into force, with exception of cases illustrated in the provisions of this Act.

2. In case of imposition of the provisional countervailing duty after the Ministry has established the existence of an actionable subsidy and caused injury, and on recommendation of the Ministry the Commission, irrespective of the decision whether to impose the definitive countervailing duty or not, shall make the final decision on establishment of the rate of the provisional countervailing duty. To this end, when establishing the existence of the injury, the following factors shall be disregarded:

1. sufficient impediment to creation or expansion by national industry the production of goods and products under investigation;

2. a threat of serious injury, except in cases where the Ministry establishes that a threat to cause serious injury would likely to lead to actual serious injury, if not to apply provisional measures.

In all other cases, where exists a threat of serious injury or impediment to creation or expansion by national industry of the production of goods and products under investigation, a provisional duty shall not be levied. The definitive countervailing duty shall be levied of the date of making final establishment of the existence of sufficient impediment to creation or expansion by national industry of the production of goods and products under investigation.

3. If the rate of the definitive countervailing duty is higher than the provisional duty, a supplier shall be released from payment of such difference. If the rate of the definitive countervailing duty is lower than the rate of the provisional duty, such difference shall be refunded to a supplier (producer, exporter, importer). Should the Commission make final negative determination of the existence of an actionable subsidy and caused injury, the amount of paid or deposited provisional countervailing duty shall be reimbursed to a supplier (producer, exporter, importer) and any bonds released.

4. 90 days before the date of application of the provisional measures but not sooner 60 days before the date of initiation of an anti-subsidizing investigation, the definitive countervailing duty may be levied on the products declared for consumption should the below circumstances exist in the aggregate:

1. the importation of the aforementioned products to Ukraine has been carried out under duly filed contracts pursuant to the paragraph four of the Article 27 of this Act;

2. the Ministry has provided the importers with an opportunity to submit their comments on application of the countervailing measures;

3. the Ministry has established that:

- besides the subsidized product under investigation causing serious injury, which is likely to undermine the remedial effect, the injury is caused by massive imports of such product in a relatively short time, which enjoys benefit out of a prohibited subsidy;
- in order to remedy the injury the Commission shall make immediate decision on imposition of a countervailing duty on such imports but not prior to the date of initiation of an anti-subsidizing investigation.

5. In case of violation or nullification of the exporter's undertakings to terminate subsidized imports, 90 days prior to the date of the application of the provisional measures the definitive countervailing duty may be levied, but in no case prior to the date of initiation of an anti-subsidizing investigation if:

1. imports to Ukraine is carried out under the contracts duly filed pursuant to the paragraph four of the Article 27 of this Act;

2. the application of the countervailing measures does not involve the imports entered prior to violation or nullification by an exporter of his undertakings to terminate a subsidized imports.

Section VII. DURATION OF COUNTERVAILING MEASURES, REVIEW AND REIMBURSEMENT OF COUNTERVAILING DUTY

Article 21. Duration of countervailing measures and general provisions of review or reimbursement of paid countervailing duty

1. The countervailing measures shall only be applied pursuant to the appropriate decision of the Commission within the terms and in the amount sufficient to eliminate an actionable subsidization which causes injury.

2. The decision on application of the countervailing measures shall cease to be effective on a date not later than five years from their application or from the date of the most recent Commission's review, if such review covers both subsidization and injury, unless the Commission determines that the expiry of the term of application of the countervailing measures would likely to lead to continuation or recurrence of subsidization and injury.

3. The requirements of the Articles 15 and 16 of this Act, except the terms provided in these Articles, shall extend to the procedure of the review of countervailing measures pursuant to the Articles 24 and 25 of this Act.

4. In all anti-subsidizing investigations performed with regard to the review of application of countervailing measures or reimbursement of a countervailing duty under provisions of this section, the Ministry shall apply same methods, if the circumstances have not changed, as those applied in anti-subsidizing investigation, to the effect of consequent impact of which, a countervailing duty has been imposed thereon and with the provisions of the Articles 10, 11, 12 and 29 of this Act taken into account.

5. The review of countervailing measures shall be carried out as quickly as possible and normally be concluded within twelve months of the date of initiation of the review.

6. The Ministry shall carry out the review pursuant to the decisions made by the Commission.

7. If during the review of countervailing measures the Ministry makes affirmative or negative decision on the existence of prohibited subsidization and/or injury, the Ministry shall draw up a report setting out its proposals and recommendations and submit it to the Commission. With regard to a provided report the Commission shall make one of the decisions below:

1. to nullify or continue application of the countervailing measures under the provisions of the Article 22 of this Act;

2. nullify, continue or vary applied countervailing measures pursuant to the Articles 23 and 24 of this Act.

8. If the decision is made to nullify application of the countervailing measures not to all countries but only to the separate exporters, such exporters shall continue to be subject to anti-subsidizing investigation in question and may be subject to a new investigation, if another review of countervailing measures has been initiated pursuant to the provisions of this section.

9. If, pursuant to the Article 23 of this Act, the review of countervailing measures is carried out at the end of application of the countervailing measures described in the Article 22 of this Act, such measures shall be also reviewed under provisions of the Article 22 of this Act.

10. A review of the countervailing measures shall not hinder the procedures of customs clearance pursuant to the aforementioned products.

Article 22. Review of countervailing measures pursuant to expiration date of their application

1. Within the first half of the last year of application of the countervailing measures the Ministry shall give a public notice in the newspaper on the date the application of such measures to be terminated.

2. The review of application of the countervailing measures, which are subject to termination thereof, shall be initiated on request of the national producer or the government of Ukraine. The countervailing measures shall remain in force pending the outcome of the Commission's decision.

3. Not later than three months prior to expiration date of the five year term of application of the countervailing measures, the national producer or the government of Ukraine may direct to the Ministry a request to review application of the countervailing measures because of expiry thereof.

4. The review of application of the countervailing measures, because of termination thereof, shall be initiated, if the request provides sufficient evidence that the expiry of countervailing measures would be likely to lead to continuation or recurrence of subsidization and injury. It shall be justified by one (or several) of the below evidences:

1. continuation or recurrence of subsidization and injury;

2. complete or partial remedy (safeguard against) of injury as a consequent impact of application of the countervailing measures;

3. status of the exporters or economic conditions are likely to lead to new types of subsidization and injury.

5. In the course of the review of countervailing measures, because of the expiry thereof, the exporters, importers, competent authorities and Ukrainian producers shall be given an opportunity to supplement, refute or give comments on the request to review the countervailing measures and determinations of the Ministry, provided that they contain duly substantiated proofs that failure to apply such measures would likely lead to continuation and recurrence of subsidization and injury.

6. The Ministry shall give public notice in the newspaper on the actual date of termination of application the countervailing measures.

Article 23. Interim review of the countervailing measures

1. The Commission may review the reasons for continuation of application of the countervailing measures on the grounds of a substantiated request of the government of Ukraine, exporter, importer or national producer, provided that more than one year has elapsed from the date of application of the definitive countervailing measures. Such request shall be directed to the Ministry and contain sufficient evidences and reasons for the necessity of an interim review.

2. The interim review shall be initiated if such request contains the sufficient evidences that:

1. continuation of application of the countervailing measures is reasonable for elimination of a prohibited subsidy;

2. continuation and/or recurrence of injury would not be likely lead to, if application of the countervailing measures be nullified or varied;

3. the applied countervailing measures are and shall not be sufficient to eliminate a prohibited subsidy and injury.

3. Where the amount of an imposed duty is lower than the amount of a prohibited subsidy, the Commission shall authorize the Ministry to initiate interim review of the countervailing measures, only if the national producer provides the Ministry with sufficient evidences that a countervailing duty would be not likely to lead or would lead to insignificant changes in prices of the product imported to Ukraine for resale. If, during the review of application of the countervailing measures, it has been confirmed that the national producer provided sufficient evidences thereof, the

Commission may decide to increase the rate of a countervailing duty to remedy (safeguard against) injury, provided that increase of the countervailing duty would not exceed the amount of the prohibited subsidy.

4. In the course of an anti-subsidizing investigation, carried out pursuant to the provisions of this Article, the Ministry shall analyze whether:

1. the circumstances of subsidization and injury have been significantly changed;

2. the applied countervailing measures had the desired effect and whether the injury, earlier established pursuant to the provisions of the Article 13 of this Act, has been eliminated.

5. In its decision, the Commission shall take into account all duly substantiated evidences with regard to the review in question.

Article 24. Accelerated review of the countervailing measures

1. An exporter importing the products to Ukraine, where a definitive countervailing duty is imposed thereon, who has not been separately subject to primary anti-subsidizing investigation for the reasons other than refusal to cooperate with the Ministry, shall have the right to apply to the Ministry with the request to initiate the review of the countervailing measures on an accelerated basis for the purpose of establishing by the Ministry and Commission the rate of the definitive countervailing duty for the exporter in question.

2. The Ministry shall carry out the review of the countervailing measures on an accelerated basis, if at the extraordinary hearings the Commission decides to initiate such review and considers the comments presented by the interested Ukrainian producers.

3. In the course of the review of the countervailing measures on an accelerated basis the Ukrainian producers shall have an opportunity to direct to the Ministry their comments on whether such review is reasonable or not.

4. By the decision of the Commission on initiation of the review of the countervailing measures on an accelerated basis the interested exporter, who is subject to such review shall be exempt from the effective countervailing duty and mandatory registration of contracts for the products imported to Ukraine pursuant to the Article 27 of this Act for the purpose of retroactive imposition of the countervailing duty of the date of initiation of the review, if it has been proved that the subsidized imports existed with regard to the exporter in question.

5. The provisions of this Article shall not apply if the countervailing duty is levied in the sense of the paragraph six of the Article 19 of this Act.

Article 25. Reimbursement a countervailing duty

1. An importer has the right to request a countervailing duty to be reimbursed, if he provides the sufficient evidences and the Commission determines that the amount of the prohibited subsidy, pursuant to which the rate of the countervailing duty is calculated, has been decreased to zero or to the level, which is lower than the value of the preliminary calculated amount of a prohibited subsidy, pursuant to which a countervailing duty has been imposed thereon.

2. For the purpose of reimbursement of the paid countervailing duty, an importer shall direct an appropriate application to the Customs. This application shall contain information on customs bodies, which carried out customs clearance of the products, on which the countervailing duty has been imposed. Attached to an application shall be documents confirming imports to Ukraine, customs clearance of the products and payment of a countervailing duty within six months of the date of the decision been made by the Commission on imposition of the definitive countervailing duty or of the date when the final decision on payment of the amounts, which secure payments of the provisional countervailing duty, has been made.

The Customs shall immediately forward to the Ministry the originals of such application and enclosures and direct their appropriate copies to the Commission and the Ministry of Finance of Ukraine.

3. An application for reimbursement of the paid amount of the countervailing duty shall be duly substantiated, provided that it submits accurate information on the paid amounts of the countervailing duty and supported by all customs documents with regard to settlements and payments of such amounts. An application shall also justify the accuracy in determination of the amount of a prohibited subsidy for the exporters and importers, who have paid the countervailing duty within the term laid down in the paragraph two of this Article.

If an importer is not related to an exporter or producer of the product in question and there is no possibility to use promptly available information laid down in paragraphs two and three of this Article, or an exporter or producer refuse to provide such information to an importer, an exporter or producer shall provide in their application sufficient evidences that the amount of a prohibited subsidy has been decreased or removed pursuant to the provisions of this section, and sufficient evidences that would confirm such justification.

4. On recommendation of the Ministry the Commission shall review the application along with the determinations of the Customs and the Ministry of Finance of Ukraine and make decision on to what extent it should be satisfied or whether to be satisfied at all. To this end the Commission may decide to initiate the interim review of the countervailing measures. Information and determinations derived thereof and established pursuant to the applied regulations shall be used by the Commission for the purpose of establishment of justification of the application and the amount of the countervailing duty to be reimbursed.

5. The decision on reimbursement of the amount paid in excess to actual fixed value of the countervailing duty shall be made by the Commission normally within nine months but not later than fifteen months of the date of submission by an importer, which product is subject to imposition of the countervailing measures, an application for reimbursement of the paid amount of the countervailing duty. The reimbursement of the above amounts shall be carried out by the Ministry of Finance of Ukraine within 90 days of the date of making appropriate decision by the Commission.

If the interested importer has not completed execution of documents for reimbursement of the paid amount of the countervailing duty within the terms specified in this paragraph, the amount in question shall not be reimbursed.

Section VIII. IMPOSITION OF THE COUNTERVAILING DUTY. GENERAL AND SPECIAL PROVISIONS

1. A countervailing duty imposed within the meaning of this Act may be extended to the import of the like products from the third countries, if the refusal to pay a countervailing duty has been established.

Any changes in the structure of trade between Ukraine and other countries that have taken place in the course of transactions and/or activities of the foreign producers, exporters and/or importers, etc., shall be treated as a refusal to pay a countervailing duty. Such changes shall (with exception of cases where the countervailing duty is levied) be treated as insufficiently substantiated or economically unjustified proving that:

- imposition of a countervailing duty may be neutralized by prices and/or volumes of the like product;
- the like product imported to Ukraine, and/or a portion of such product continue to enjoy benefits out of a prohibited subsidy.

2. Where an interested party (applicant or executive body of the Ukrainian government) assumes the existence of a refusal to pay a countervailing duty it shall provide to the Ministry an application setting out sufficient evidences of the fact thereof pursuant to the paragraph one of this Article.

3. Upon receipt of an application, provided pursuant to paragraph two of this Article, and on the basis of an appropriate decision of the Commission, the Ministry shall carry out an investigation of the facts of a refusal to pay a countervailing duty. In the aforementioned decision the Commission shall authorize the Ministry to apply:

1. mandatory registration and filing of the contracts pursuant to the paragraph four of the Article 27 of this Act, under the provision of which the importation of products to Ukraine is carried out;

2. deposition by a supplier of an appropriate amount. Deposits may be made at the place of customs clearance of the imports introduced to commerce of Ukraine, which is subject to the anti-subsidizing investigation. A procedure of deposits shall be established by the Customs.

The appropriate procedure and provisions of this Act shall be applied to performance of an anti-subsidizing investigation except those relating to the time-limits of such investigation. The investigation in question shall be carried out by the Ministry with participation of the Customs and shall be concluded within the term of nine months.

4. If the Ministry has established the existence of the facts of refusal to pay a countervailing duty, the Commission, on recommendation of the Ministry, may decide by simple majority vote to apply the countervailing measures. Such measures shall be applied from the date of making of the appropriate decision pursuant to the paragraph three of this Article.

5. Where the imports to Ukraine is carried out under a license of the Ministry certifying that such imports do not lead to refusal to pay a countervailing duty, no countervailing measures shall be applied thereto, nor to the contracts, under which such importation is carried out, shall be applied a mandatory registration pursuant to paragraph four of the Article 27 of this Act. The license shall be issued by the Ministry to an importer on his application and under the appropriate decision made by the Commission. Such license shall be issued for the certain period of time and under conditions illustrated above.

6. The measures applied within the meaning of this Article shall not hinder the procedure of customs clearance of the product, which is subject to the anti-subsidizing investigation.

Article 27. Countervailing duty. General provisions

1. A preliminary or definitive countervailing duty shall be levied at the rate and under the terms established in the appropriate decision of the Commission on application of the countervailing measures. A duty in question shall be levied on the certain imports introduced to commerce of Ukraine, irrespective of payment of other taxes or charges (mandatory payments) including duties, which are normally collected at the time of importation of certain categories of goods into the customs territory of Ukraine.

(paragraph one of part one of Article 27 is amended pursuant to the Law of Ukraine of 13 March 2012 N 4496-VI)

The countervailing and anti-dumping duties shall not be simultaneously levied on the imports of a single supplier.

2. The Ministry shall give a public notice in the newspaper on the appropriate decisions to impose the provisional or countervailing measures, on acceptance of an exporter's undertakings to terminate the subsidized imports or on termination of the anti-subsidizing procedure or anti-subsidizing investigation without application of the countervailing measures. For the purpose of adherence to the requirements for the protection of confidential information, such decision shall identify the names of the exporters if practicable, the names of the countries, a description of the product pursuant to the Harmonized system of inventory and codification of the product (with the specificity of application of such system in Ukraine accounted), a summary of the facts and basic determinations of the existence of the prohibited subsidization and injury. A copy of such decision shall be provided to all interested parties.

Provisions of this Article shall be also applied to the review of the countervailing measures.

3. For the purpose of protection of the national interests, the application of the countervailing measures pursuant to this Act, may be suspended by a decision of the Commission made by a simple majority vote for the period of nine months. This term may be extended to one year, if the

appropriate decision is made by a qualified majority vote. The application of the countervailing measures may be suspended pursuant to existence of the following conditions:

1. economic conditions temporarily vary so, that the suspension of application of the countervailing measures would likely lead to no recurrence of the injury;

2. the national producer has been given an opportunity to submit his comments pursuant to the suspension of application of the countervailing measures;

3. the comments presented by a national producer have been reviewed by the Commission.

The effect of the countervailing measures may be recurred by the decision of the Commission, provided that their suspension has been unjustified. To this end the interested party shall have the right to provide the Ministry with appropriate comments to be accounted therein. The appropriate decision thereon shall be made by the Commission on recommendation of the Ministry.

4. The appropriate decision pursuant to application of registration of contracts, under provisions of which the imports is introduced to commerce of Ukraine, including mandatory registration of the products pursuant to the provisions of this Act, shall be made on recommendation of the Ministry at the extraordinary hearings of the Commission. The Ministry shall give such recommendation, if the substantiated application (claim) of the interested party, central body of the executive authority of Ukraine or the national producer has been submitted thereto.

Upon acceptance of the application (claim) the Ministry shall review, within five days of the date of acceptance, all information and evidences contained therein for the purpose to determine whether such information and evidences have been sufficient for the Commission to make the appropriate decision. If the Ministry establishes that provided information and evidences are sufficient and substantiated, the Commission at its hearings, on recommendation of the Ministry, may decide to apply registration of contracts, under provisions of which the imports is introduced into commerce of Ukraine, including their mandatory registration pursuant to the provisions of this Act.

Pursuant to the decision on application of such registration and after the decision in question comes in force, the countervailing measures shall be applied to the imports introduced to commerce of Ukraine under contracts registered in the Ministry.

The decision on registration of the contracts, under which the imports is introduced into commerce of Ukraine, shall identify an appropriate object of registration and if practicable, the approximate rate of a countervailing duty calculated for the purpose of possible imposition of such duty in the future. A duty value of the product shall be calculated pursuant to the basic conditions of the delivery CIF-the boarder of Ukraine.

The term of application of mandatory registration of the contracts, under which the imports is introduced into commerce of Ukraine, shall not exceed nine months of the date of application.

The importation of the products to the customs territory of Ukraine under the contracts to be registered, shall be effected, if the license for the imports, issued by the Ministry and documents confirming transference of the appropriate sum of money on deposit, have been produced. The money can be placed on deposit at the place of customs clearance of the product imported to Ukraine under the contracts registered pursuant to the established procedure therein. In some cases payment of the countervailing duty by an importer may be executed in bonds.

5. If the import, which is subject to application of the countervailing measures, is introduced into commerce of Ukraine for the use of the Ministry of Defence of Ukraine, such imports shall be released from a countervailing duty, provided that the Commission has made an appropriate decision thereon and where the importation is effected under the contracts registered pursuant to the paragraph four of this Article.

6. Once in a quarter of a month the Customs shall inform the Ministry and the Commission on the volume of the imports under anti-subsidizing investigation or where the countervailing

measures are applied thereto, and on the amount of a countervailing duty levied pursuant to the appropriate decision of the Commission.

Article 28. Verification of information in other territories

1. If required, the Ministry may carry out verification of information in the territory other than Ukraine for the purpose of:

1. examination of book-keeping records of the importers, exporters, producers and corporations (associations), trade organization, physical entities, etc.;

2. analysis of accuracy of the information of the existence of subsidization and injury, provided in the course of the investigation.

2. If required, the Ministry may carry out verifications or investigations in other countries provided that:

1. the interested party so agrees;

2. the appropriate competent authorities has been notified by the Ministry;

3. the interested parties or the appropriate competent authorities, so notified, do not object thereto.

If the interested party so agreed, the Ministry shall notify the competent authorities of the name and address of an enterprise to be investigated and proposed terms thereof.

If the interested party does not so agree, the investigation may be not carried out pursuant to the proposed terms. To this end the appropriate provisions of the Article 30 shall apply.

3. The interested parties shall be notified of the list of documents to be verified and other information to be provided in the course of investigation. The Ministry shall have the right to require, in the course of investigation, a provision of more detailed information from the interested party if the necessity arises.

4. In the course of the investigation and verification of the available information, the Ministry may apply to the members of the Commission for providing the assistance in this respect.

Article 29. Selective methods of anti-subsidizing investigation

1. Where the number of the applicants, exporters or importers (hereinafter referred as the parties), nature of products or respective transactions is too great, the Ministry may be confined to:

1. moderate number of the parties, nature of product or transactions making use of statistically justified selection pursuant to available information;

2. the greater volumes of production, sale or exports that may be investigated within the terms specified by this Act or established by the Commission if required.

2. A definitive selection of the parties, nature of products or transactions for making use of the selective methods of an anti-subsidizing investigation shall be made by the Ministry. After consultations held with the interested parties, or where the latter so agreed, the priority shall be given to an appropriate selection thereof, provided that the interested parties has:

1. informed the Ministry on their interest therein pursuant to the paragraph fourteen of the Article 15 of this Act;

2. for the purpose of making an appropriate selection, provided the accurate and adequate information to the Ministry within three weeks of the date of the initiation of the anti-subsidizing investigation.

3. If the Ministry is making use of the selective methods in the anti-subsidizing investigation within the meaning of this Article, the individual amount, that equals to the amount of the prohibited subsidy, shall be calculated for the exporter or producer, which has not been selected before, and the appropriate information shall be provided within the time-limits laid down in this Act, except in cases, where the number of the exporters or producers is so significant that any verification of those values for a separate exporter or producer would highly complicate the performance of an anti-subsidizing investigation, hinder the procedure of termination of the investigation in question and making appropriate decision on the application of the countervailing measures.

4. Where the Ministry has decided to apply of a selective method in an anti-subsidizing investigation and all selected parties or some of them refuse to cooperate with the Ministry, which sufficiently affects the results of an anti-subsidizing investigation, the Ministry may use another selection. Where the interested party refuses to cooperate with the Ministry and there is no enough time to make use of another selection, the appropriate provisions of the Article 30 of this Act shall apply.

Article 30. Refusal to cooperate with the Ministry

1. In cases, where any interested party refuses access to, or otherwise does not provide needed information within the time-limits laid down in this Act, or significantly impedes the investigation, the preliminary and final, whether affirmative or negative, determinations of the immediate application of the countervailing measures may be made by the Ministry on the basis of the facts available. If during the anti-subsidizing investigation the Ministry establishes that any interested party has provided inaccurate or erroneous information the Ministry may:

1. ignore such information;

2. notify the interested parties of the consequences of refusal to cooperate with the Ministry.

2. The absence of a response from a supplier of the information in question shall not be considered as refusal to cooperate with the Ministry, if the interested party could justify that such responses in the forms established by the Ministry would be likely lead to extra incidental and excess expenses.

3. If the information provided by the interested party is incomplete, the Ministry shall take it into account provided that:

1. such incompleteness does not hinder the adequate determinations to be made by the Ministry;

2. such information has been provided to the Ministry within the appropriate time-limits;

3. such information is acceptable for verification;

4. the interested parties that provided such information have been acting conscientiously and within their capabilities.

4. If the Ministry ignores provided evidences or information, the interested party shall be immediately notified of the reasons of non-acceptance of such information and given an opportunity to provide additional comments within the specified time-limits. Where such comments have been treated as insufficient, the reasons for non-acceptance of the aforementioned evidences or information shall be directed to an appropriate interested party and described in determinations to be published in the newspaper.

5. Where determinations, including those related to a prohibited subsidy, have been made pursuant to the paragraph one of this Article, especially those made on the basis of the information provided in the respective application, the information in question shall be verified within the established time-limits of an anti-subsidizing investigation, if practicable, making use, during the course of the investigation, of the information provided to the Ministry by other available independent sources and/or other interested parties relating to:

1. published list of prices;

2. statistical reports and customs statistical accounting maintained by the government of the respective country.

6. If the interested party refuses to cooperate with the Ministry completely or partially and the relevant information pursuant to anti-subsidizing information is not provided thereto, the results of such investigation may be less favourable where the party does not refuse to do so.

Article 31. Confidentiality

1. Any information which is by nature confidential (for example, 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 from whom the supplier acquired the information, etc.), or which is provided on a confidential basis by parties to an anti-subsidizing investigation shall, upon good cause shown, be treated as such by the Ministry.

2. The Ministry shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances the interested parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

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

4. The provisions of this Article do not impede the Ministry or Commission to disclose general information, for example legal justification of the decisions made pursuant to this Act, or to disclose evidences pursuant to which the Ministry or the Commission made the appropriate decisions. Where such information is disclosed the lawful interests of the interested parties, pursuant to non-disclosure of their confidential and/or states secret, shall be taken into account.

5. The Ministry, Commission or their respective officers must not disclose the information obtained pursuant to the provisions of this Act without permission given by a person, who has supplied such information, if such person insists on a confidentiality of the information in question. The information exchanged between the Ministry and Commission, information on the hearings of the Commission or official documents of the Ministry or Commission relating to an anti-subsidizing investigation must not be disclosed except in cases illustrated in the provisions of this Act.

6. The information, obtained pursuant to the provisions of this Act, shall be used only for the purpose it has been provided for.

7. The right to have access to the confidential information, which pursuant to the provisions of this Act is supplied by the interested party or by the Ministry in the course of the anti-subsidizing procedure or investigation, shall have the citizens of Ukraine i.e. the legal advisers or attorneys acting on behalf of the interested party.

The Ministry shall keep records of the physical persons, who have access to the confidential information and reject the access to the confidential information if establishes that the person has disclosed the confidential information within the meaning of this Act.

Article 32. Final provisions

1. The interested parties shall have the right to submit a request for the information to be provided pursuant to the facts and determinations, according to which the provisional and countervailing measures have been applied. Where the countervailing measures have been

applied, the written request to provide such information shall be served on the Ministry. The Ministry shall give written answer as quickly as possible.

2. The interested parties may submit a request for providing them with the final information pursuant to the facts and determinations, according to which the Ministry has recommended to apply the definitive countervailing measures, suspend or terminate the anti-subsidizing investigation without application of the countervailing measures. To this end the Ministry shall pay special attention to the information, facts and determinations, which differ from those information, facts and determinations, pursuant to which the decision on application of the provisional measures has been made.

3. A request for the final information, illustrated in the paragraph two of this Article, shall be served on the Ministry in writing. In cases, where the provisional countervailing measures have been applied, such requests shall be served on the Ministry and other interested parties not later than one month of the date of a public notice on the decision to apply the countervailing measures. Where the provisional measures have not been applied, the interested parties shall have an opportunity to submit a request for providing them with the final information within time-limits specified by the Ministry.

4. The Ministry shall provide the final information in writing. The information with the accounted requirements to protection of the confidentiality shall be normally delivered not later than one month prior to the date of making the final decision by the Commission or to the date of submission by an interested party its final proposition within the meaning of the Article 19 of this Act. If the Ministry and/or Commission fail to provide the information, facts or determinations immediately, those information, facts or determinations shall be provided to the interested party later as quickly as possible. Delivery of the information shall not impede to making further decisions by the Ministry or Commission. Where such decision is based on the facts and determinations other than those provided in the preliminary information, such information, pursuant to existence of new facts and determinations, shall be directed to the interested parties as quickly as possible.

5. Any comments of the interested parties, being supplied after the final information has been provided, shall be accounted if received by the Ministry within the terms specified for each separate case but not exceeding ten days.

6. The information, documents and comments to be provided to the Ministry by one of the interested parties in the course of the investigation carried out in accordance with the provisions of this Act, shall be also supplied to other interested parties. Where such information, documents and comments are supplied only to the Ministry and not supplied to other interested parties, such information, documents and comments must not be accounted in the course of investigation.

Article 33. Notification of the competent authorities of the interested country

1. The Ministry of Foreign Affairs of Ukraine shall notify the competent authorities, interested parties of all decisions of the Commission on the investigations carried out pursuant to the provisions of this Act.

2. A note of initiation of an anti-subsidizing investigations served on the competent authorities of an interested party shall have an adequate information on the following:

1. the name of the country (countries) of origin and/or exports and products involved;

2. the date of initiation of an anti-subsidizing investigation;

3. a description of the subsidy practice or practices to be investigated;

4. a summary of the factors, on which the allegation of injury is based;

5. the address, to which the comments of the interested parties should be directed;

6. the time-limits established in the appropriate decision of the Commission, which allow interested parties to direct their comments.

3. Pursuant to the paragraph one of this Article, the Ministry of Foreign Affairs of Ukraine shall notify the competent authorities of the interested country of:

1. affirmative or negative preliminary or final determination of the existence of an actionable subsidy and injury;

2. a decision to accept an undertaking of an exporter pursuant to Article 18 of this Act to terminate imports subsidization;

3. the termination of such undertaking or nullification of the definitive countervailing duty.

A detailed report shall be attached to each such note or a note shall have the detailed determinations of the Commission.

4. The provisions of this Article, along with the appropriate amendments thereof, shall be applied to initiation and termination of the reviews carried out pursuant to the Articles from 21 to 25 of this Act, and to the decisions on recurrence of imposition of the countervailing duty pursuant to the Article 20 of this Act.

Article 34. Correction of errors made by the performers

1. The errors made by the performers in mathematical, typing, copying, duplicating or the like operations or other unpremeditated technical errors, the Ministry refers to the mistakes made by the performers, shall be corrected.

2. Where the interested party makes the application on allegedly made error, the Ministry may direct to the interested parties the calculations, on the basis of which the final decision on imposition of the countervailing duty or review of the countervailing measures shall be made.

3. The written application, pursuant to the paragraph two of this Article, shall be directed by the interested party to the Ministry within five working days of the date of delivery the appropriate information to the interested party pursuant to the provisions of the Article 32 of this Act. The interested party may direct to the Ministry its comments setting out newly found errors that have been made by the performers.

4. The comments, laid down in the paragraph three of this Article, shall be submitted within five working days of the date of delivery of the calculations, if the Ministry would not extend this term pursuant to the written application thereof to be submitted within five working days of the date of delivery of the calculations justifying reasons for the time-limit to be extended.

Such comments shall be submitted to the Ministry and to all interested parties in writing. The interested parties may give response to the comments submitted pursuant to the provisions of this Article. The response shall be filed by the Ministry within five working days of the expiry date of submission of such comments, if the Ministry would not extend the time-limits on the basis of the written application made by the interested party, which should be submitted within five working days of the date of delivery of the relevant calculations justifying reasons for the time-limit to be extended.

5. The Ministry shall analyze and verify the comments submitted pursuant to the provisions of this Article and, if required, correct errors made by the performers, make amendments in the draft final resolution on imposition of the countervailing duty or the draft resolution on the review of the countervailing measures. The Ministry shall notify the interested parties of introduction of such amendments. The introduction of amendments, pursuant to correction of errors made by the performers, shall not be treated as amending draft resolution of the Ministry or the Commission on payment of the countervailing duty or the review of the countervailing measures.

Article 35. Factors of the national interest

1. The determination, whether the national interests require imposition of the countervailing measures, shall be based on the estimation of all interests including the interests of the national producers and consumers, effect of the subsidized imports on employment of the population,

investments of the national producers and consumers, international economic interests of Ukraine. Such determination shall be made, pursuant to the provisions of this Article, provided that all interested parties have been given an opportunity to express their views pursuant to the paragraph two of this Article. To this end especial attention shall be paid to elimination of the effects of disproportion in the trade turnover caused by the prohibited subsidization, which cases injury and promotes recurrence of competition.

The countervailing measures, illustrated pursuant to the facts of subsidization and injury established in the course of the anti-subsidizing investigation, may not apply, where the Commission, taking into account all provided information, on recommendation of the Ministry, makes accurate determination that application of the countervailing measures contradicts to the national interests.

2. The applicants, importers, their corporations (associations), consumers and their organizations may express their views within the time-limits specified in the notice on initiation of an anti-subsidizing investigation, and submit to the Ministry the comments as to whether application of the countervailing measures answers the national interests to be accounted in the appropriate decision of the Commission.

The Ministry may direct such information or an appropriate summary to other interested parties described in the provisions of this Article, who may submit their comments in this respect.

3. The interested parties may require the hearings to be summoned by the Ministry. Such requirements shall be satisfied, if provided to the Ministry in writing within the time-limits established in the notice on initiation of the anti-subsidizing investigation, or, if from the point of view of the national interests, they have any specific reasons for holding the hearings at the Ministry.

4. The interested parties may submit to the Ministry their comments pursuant to the Commission's decision on imposition of the provisional countervailing duty. The Ministry may account such comments, if submitted to the Ministry within one month of the date of application of the provisional measures and may, if required, direct them in a form of an appropriate summary to other interested parties that may also submit their comments thereon.

5. The Ministry shall examine the information provided by the interested party pursuant to the paragraph two of this Article and determine as to what extent such information is representative. The results of such examination and the appropriate decision on justification thereof shall be submitted to the Commission. The summary of determinations of the Commission's members, which has been reviewed at the hearings of the Commission, shall be accounted by the Ministry in its recommendations to be submitted to the Commission pursuant to the provisions of the Article 19 of this Act.

6. The interested parties may require to be provided with the facts and determinations, pursuant to which the final decisions of the Commission have been made. The Ministry may provide such information, if it would not later impede the Ministry or Commission to making the appropriate decisions.

7. The information submitted, pursuant to the provisions of this Article shall, be accounted, provided that it has been substantiated by the evidences justifying its impeccability under the requirements of this Act.

Article 36. Specificity of application of the countervailing measures to the imports of the developing countries

1. Any countervailing measures shall not be applied to the imports of the developing countries – members of WTO provided that:

1. such imports enjoys the benefit derived from an actionable subsidy, which in law or in fact affects the results of exporting transactions including those laid down in the Annex 1 to this Act;

2. the above countries are the least developed countries – Members of WTO, where GNP per capita per year amounts to $1000.

2. The list of the countries described in paragraph one is illustrated in the Annexes 5 and 6 to this Act.

3. The amendments to the list of the countries, illustrated in the Annexes 5 and 6 to this Act, may be introduced twice a year on recommendation of the Ministry and pursuant to the information of the Organization of the United Nations and the World Bank.

Article 37. Enactment of the Commission, Ministry and Customs

The Commission, Ministry and Customs may, pursuant to carrying out the investigation under the provisions of this Act and within their competence, adopt the appropriate enactment. Such acts shall come in force within the time-limits established therein, if not otherwise provided by the Act, 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 mandatory for execution.

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

Article 38. Procedure of enactment

1. This law shall be in effect as of 30 days from the date of publishing.

2. The provisions of the sub-paragraph 2 of paragraph four of the Article 2, paragraph six of the Article 15, sentence three of paragraph ten of the Article 15, sentence two of paragraph four and sub-paragraph 2 of paragraph five of the Article 19 of this Act shall be applied of the date of Ukraine joining GATT and WTO under established order.

3. The sub-paragraph 2 of paragraph five of the Article 19 of this Act shall cease to be effective ten years after the Agreement 1994 on the World organization of trade has come into force.

4. The sub-paragraphs from 1 to 3 of paragraph five of the Article 19 of this Act shall not apply to the civil aircraft under the provisions of the Agreement 1979 on civil aircraft trade (BISD 26S/162).

5. The sentences two and three of paragraph three and the sentence two of paragraph five of the Article 17, the Articles 32 and 34 of this Act shall not apply to the interested parties and/or competent authorities of the exporting countries unless the competent authorities of such countries, which are involved in the anti-subsidizing investigation pursuant to the Ukrainian imports, would grant similar rights to the Ukrainian interested parties illustrated in the Articles 17, 32 and 34 of this Act.

6. The laws and other standard and legal enactment of Ukraine shall apply if not in conflict with the provisions of this law.

President of Ukraine **L. KUCHMA**
Kyiv
22 December 1998
No. 331-XIV

ANNEX 1

TO THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS" OF 22 DECEMBER 1998 NO. 331 - XIV

1. Interpretation of the terms and expressions laid down in the Annexes to the Law of Ukraine "On Protection of National Industry Against Subsidized Imports".

For the purpose of the Annexes to the Law of Ukraine "On Protection of National Industry Against Subsidized Imports":

1. direct taxes shall mean taxes on wages, profits, real estate, interests, rents, royalties, loans and all other forms of income, and taxes on the ownership of real property;

2. import charges – mandatory payments in the event of import, including import duty, other taxes, charges and mandatory payments administered in the event of import of goods, works and services;

(clause 2 of Section I is amended pursuant to Law of Ukraine of 13 March 2012 N 4496-VI)

3. indirect taxes shall mean sales, turnover, value added, franchise, transfer, estate, ownership transfer, input and equipment taxes, exclusive right and privilege, and excise, stamp, boarder taxes and all other taxes other than direct taxes and import charges;

4. prior stage indirect taxes are those levied on goods and services used directly or indirectly in making the product;

5. cumulative indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

6. exemption of an exporter from taxes by the government shall mean the full or partial exemption or deferral of import charges;

7. remission shall mean the full or partial refund or rebate of taxes on import or freight traffic refunded by the government to en exporter under investigation;

8. stamp tax shall normally mean a duty of exporting country;

9. transfer shall mean payments (or transfer of the property, works or services) for which the payer does not directly receive goods, works or service;

10. national shall mean relation to the exporting country;

11. commercially acceptable conditions shall mean freedom of choice between national and imported product where this choice is actually free and depend only on trade criteria, for example demand and offer in the national market;

12. inputs used in production shall be treated as those physically incorporated and present in the product exported, i.e. energy, fuel and oil used in the process of production including catalysts consumed thereof to make such product;

13. waste shall mean a portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exporting product (for reasons such as inefficiencies), and is not recovered, used nor sold by the same manufacturer;

14. basic period shall mean the fixed period of time within which the received information is treated as representative and basic for estimation of the measures of national support of the producers of the farm products pursuant to the Annex 4. For the countries members of GATT/WTO the basic period shall be established pursuant to international and legal enactment of GATT/WTO;

15. raw materials shall mean the products of agriculture, forestry or fishery, or natural raw materials or those processed to be sold on international markets in large amounts.

2. Illustrative list of export subsidies

Export subsidies may be granted as follows:

1. The provision by governments of direct subsidies to an enterprise or an industry contingent upon export performance.

2. Currency retention schemes or any similar practices which involve a bonus on exports.

3. Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

4. The provision by governments either directly or indirectly through government-mandated schemes, of imported or domestic products (services) for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products (services) for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.

5. The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by the exporters, importers or producers upon export operations. The deferral of charges may not deemed to be a subsidy where interest is paid on such payments.

6. The allowance of special deductions directly related to exports or export performances, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

7. The exemption or remission in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

8. The exemption, remission or deferral of prior stage cumulative indirect taxes on property (goods) and services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on property (goods) and services used in the production of like when sold for domestic consumption.

The exemption, remission or deferral of prior stage cumulative indirect taxes shall not be treated as a subsidy provided that such exemption, remission or deferral have been levied on exported products where:

1. such products are not the like products produced and distributed to be sold for domestic consumption;

2. the prior stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported products (including normal allowance for waste).

The provisions of this subparagraph shall apply pursuant to the provisions of the Annex 2.

The provisions of this subparagraph shall not apply to added value and boarder taxes that substitute the provisions in question.

9. The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided that imported inputs are consumed in the production of the product when sold for domestic consumption.

In particular cases the national producer may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for

them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years.

The provisions of this subparagraph shall apply pursuant to the Annexes 2 and 3.

10. The provision by governments (or special institutions or organizations controlled by governments) of export credit guarantee or insurance programmes, insurance or guarantee programmes against increase in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

11. The grant by governments (or special institutions or organizations controlled by an/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

If a Member of WTO is a party to an international undertaking on official export credits to which at least twelve original members of WTO as of 1 January 1979 (or a successor undertaking which has been adopted by those original members), or if in practice a member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy.

12. Any other charges on the public account constituting an export subsidy in the sense of the Annex 7.

3. Application of provisions of this Annex

The provisions of this Annex shall apply pursuant to generally recognized principles and norms of the international commercial Act in the sense of agreements and documents of the GATT/ WTO.

ANNEX 2

TO THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS" OF 22 DECEMBER 1998, NO. 331-XIV

Guidelines on consumption of inputs in the production process.

1. Indirect tax rebate schemes can allow for exemption, of prior stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. Indirect rebate schemes can constitute pursuant to paragraph eight of the Section II of the Annex 1 an export subsidy to the extent that they result in exemption of prior stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product.

Drawback schemes can constitute an export subsidy to the extent that they result in remission of drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product.

Both paragraphs eight and nine of the Section II of the Annex 1 stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph nine of the Section II of the Annex 1 also provides for substitution where appropriate.

3. In examining whether inputs are consumed in the production of the exported product, the Ministry should proceed on the following basis:

1. where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting country has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amount;

2. where such a system or procedure is determined to be applied, the Ministry should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practice in the country of export;

3. the Ministry may deem it necessary to carry out, in accordance with the Article 28 of the Act of Ukraine "On safeguards of the national industry against subsidized imports", certain practical tests in order to verify information or to satisfy themselves that the procedure is being effectively applied;

4. where there is no such system or procedure, or where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied effectively, a further examination by the exporting country based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the Ministry deemed it necessary, a further examination would be carried out in accordance with sub-paragraphs from 1 to 3 of this paragraph;

5. the Ministry should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. An input need not to be present in the final product in the same form in which it entered the production process;

6. in determining the amount of a practical input that is consumed in the production process of the exported product, a "normal allowance for waste" should be taken into account. Such waste should be treated as consumed in the production of the exported product;

7. the Ministry's determination of whether the claimed allowance for waste is "normal" should normally take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate.

The Ministry should bear in mind that an important question is whether the authorities in the exporting country have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

4. The provisions of this Annex shall apply pursuant to the principles and norms of the international commercial act within the meaning of the Agreements and documents GATT/WTO.

ANNEX 3

TO THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS" OF 22 DECEMBER 1998, NO. 331-XIV

Guidelines in the determination of substitution drawback system of import charges on inputs as export subsidy

1. Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted or imported. Pursuant to paragraph nine of the Section II of the Annex 1 such drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs which drawback is being claimed by an appropriate object of economic and trade relations of the exporting country against the competitive authorities of the country in question.

Pursuant to this Annex imported inputs shall be those of foreign origin.

2. In examining any substitution drawback system in the course of the anti-subsidizing investigation the Ministry should proceed on the following basis:

1. paragraph nine of the Section II of the Annex 1 stipulates that the home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported input being substituted;

2. the existence of a verification system and procedure of drawback of the import charges on inputs in the exporting countries is very important. Such system and procedure enables the government of the exporting country to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question;

3. where it is alleged that a substitution drawback system conveys a subsidy, the Ministry should first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the Ministry should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export;

4. to the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the Ministry to carry out, in accordance with the Article 28 of the Act of Ukraine "On safeguards of the national industry against subsidized imports", certain practical tests in order to verify information or to satisfy itself that the verification procedures of drawback of the import charges are being effectively applied;

5. there may be a subsidy where:

- there are no verification procedures of drawback of the import charges;
- such procedures are not reasonable;
- such procedures are instituted and considered reasonable but are found not to be applied or not applied effectively;

In such cases a further examination by the exporting country based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the Ministry deemed it necessary a further examination would be carried out in accordance with sub-paragraphs 3 and 4 of this paragraph.

6. the existence of a substitution drawback provision under which exporters are allowed to select particular import shipment on which drawback is claimed should not of itself be considered to convey a subsidy;

7. an excess drawback of import charges in the sense of paragraph nine of the Section II of the Annex 1 would be deemed to exist where government paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

3. The provisions of this Annex shall apply pursuant to the principles and norms of the international commercial act within the meaning of the Agreements and documents GATT/WTO.

ANNEX 4

TO THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS" OF 22 DECEMBER 1998, NO. 331-XIV

Principles of state support of the producers of farm products

General provisions

1. The application of measures of state support to the agriculture producers shall not affect the normal development of the production or trade of the farm products or such affect shall be minimized.

The measures applied to support agriculture shall meet the following criteria:

1. the state support shall be given in the framework of the national programme (including payable income taxes) getting financial support from the state funds with no attraction of transfer of the consumers thereof;

2. the state support shall not affect the prices maintained by the producers;

3. the state support shall meet the criteria and conditions of services provided within a framework of state programmes pursuant to paragraphs from two to thirteen of this Annex.

General services provided within a framework of state programmes

2. The provision of general services involves the expenses (or exemption from payable income taxes) to fulfil the programmes pursuant to which the services or privileges to agriculture or countrymen are given.

The general services shall not include direct payments to the producers of the farm products or to those involved in processing thereof.

The programmes where the government provides services or grants privileges to agriculture or the countrymen shall meet the basic criteria laid down in sub-paragraphs from 1 to 7 of this paragraph. Such programmes shall mean the performance of:

1. scientific and research work, including general scientific and research work; researches pursuant to the programmes of the environmental protection; the programmes of scientific and researches work pursuant to certain products;

2. fight against pests and diseases of the farm plants and live-stock including the systems of early prevention, quarantine and elimination;

3. training services including the provision of facilities for general and specialized training;

4. information spread and consulting services, including the supply of equipment and facilities to facilitate the transmission of information to the producers and consumers and the results of scientific and research work;

5. inspection services including services of a general nature and expertise of certain products to establish whether they are safe for health of a human being or safe in general (including security of environment), or whether conform with the quality and standards;

6. marketing and promotion services including marketing information (information on the markets and their conditions), consultations on certain products and their promotion with exception of definite costs of the products that may assume the sellers for the purpose to sell them at a lower cost or to grant direct economic privilege to the buyers;

7. services in infrastructure including power networks, roads and means of transportation, market and port constructions, water supply systems, embankments and drainage systems, work pursuant to realization of the programmes of environmental protection.

In such cases the costs shall be assumed only for provision or construction of capital buildings and exclude subsidization of the supply of equipment to the farms other than equipment supplied for the purpose of development of the networks of generally acceptable services. Subsidization of inputs or working costs, taxes or charges payable by the consumers that enjoy privileges shall be excluded from the above services;

8. other services.

Store-keeping of the state stock of products to secure food safety

3. The costs (or exemption from payable income taxes) involved in accumulation and store-keeping of the stock of products being an integral part of the programme to secure food safety shall be established by an appropriate national legislative act.

Such programme may specify the measures where the government provides the owners of the private warehouses with the appropriate products.

The volume and accumulation of such stocks of products shall serve a preset purpose exclusively in the sphere of security of the food safety. A process of accumulation of such stocks of products and their respective use shall be transparent from the point of view of the financial costs. The purchase of food products by the government shall be carried out at the current market prices, and the sale from the stocks shall be carried out at the price that is not less than the current domestic market price for the like product and the product of the same quality.

The food stock safety programmes of the governments in the developing countries where fulfilment of such programmes is transparent and ensured pursuant to officially published objective criteria or national standard acts, and programmes where for the purpose of security of the food safety the stock food products are purchased and sold at the prices established by the government shall deem to conform with the provisions of this paragraph provided that the difference between purchase and external advertised price has been accounted in the aggregate measures of support.

National food support

4. The costs (or exemption from payable income taxes) involved in providing food support to that part of the population that needed such support.

The right to receive food support shall meet the definitely specified criteria of nourishment. Such support shall be given in one of the below forms:

1. direct supply of the food products to the interested parties;

2. allocation of funds in the amount sufficient to purchase the food products at the market or subsided prices by the interested parties that have the right to be supported.

The purchase of the food products by the government shall be carried out at the current market prices provided that financing and control over such support is adhered to the conditions of transparency.

For the purpose of paragraphs three and four of this Annex the supply of the food products at the subsided prices to satisfy food demand of the urban and rural poor of the developing countries that has been permanently provided at the moderate prices shall deem to conform with the provisions of this paragraph.

Direct financing of the producers of the farm products

5. A support in a form of direct financing of the producers of the food product (or in a form of exemption from payable income taxes or remuneration in kind) shall meet the basic criteria illustrated in paragraph one, and from six to thirteen of this Annex.

Independent income support

6. The right to use financial contributions shall be specified pursuant to definitely expressed criteria, such as income, status of a producer or landowner, using factors or level of production within specified and fixed basic period of time.

In any particular year after the end of the basic period the amount of the above financial contributions shall not depend on:

1. a separate type or volume of the products (including live-stock) realized by a producer;

2. domestic or world prices extending to any realized products;

3. use of the production factors.

The right to receive such contributions does not depend on production of the products.

Financial participation of the governments in income insurance and inflow security programmes

7. The right to use financial contributions may be acquired in the event of losing income and shall be established only pursuant to income in agriculture exceeding 30% of average gross income or the equivalent in a form of net profit (with exception of any payments made in a framework of such or alike programmes) for the prior three-year period or average indices for the three-year period calculated on the base of the prior five-year period excluding the highest and lowest indices of income. Any producer adhering to such conditions shall have the right to use financial contributions.

The amount of such financial contributions shall compensate less than 70% of income losses in the year the producer has acquired the right of having the support in question.

The amount of any specified financial contributions shall depend on income only. This amount shall not depend on:

1. type of product or volume of its production (including live-stock) realized by a producer;

2. domestic or world prices extending to such product;

3. the factors used in the production.

Where a producer uses financial contribution in the same year pursuant to paragraphs seven and eight of this Annex (support in the event of the acts of God), the total amount of such contributions shall be less than 100% of the total costs borne by a producer.

Direct contributions to give support in the event of the act of God or those made in a form of financial participation of the government in realization of the harvest insurance programme

8. The right to use financial contributions:

- shall be acquired only if existed or existing act of God or alike natural calamity (epidemic, pest infection, nuclear accidents and the war on the territory of the country in question) has been officially recognized by the government; and

- depend upon the amount of the production losses exceeding 30% of weighted average level of production for the prior three-year period or weighted average indices for the three-year period calculated on the base of the prior five-year period excluding the highest and lowest indices of income.

The above contributions payable in the event of the act of God shall be made only in cases of losses of income, live-stock, (including financial contributions to give veterinary aid to the live-stock), land or other factors of production as a consequent impact of the act of God.

The above contributions shall:

- reimburse the recovered costs in full and be higher than the losses incurred;
- reimburse the claimed amounts where limitation of action is non-applicable and include demands, specification pursuant to the type or volume of the future production.

Financial contributions being made in the event of the act of God shall not exceed the level of the claimed amount needed to prevent or decrease the new losses specified in sentence four of this paragraph.

Where a producer has been using financial contributions pursuant to this paragraph and paragraph seven of this Annex within one and the same year (income insurance and income security mechanism programmes) the total amount of financial contributions shall be less than 100 % of the total losses borne by a producer.

Assistance in structural reconstruction by means of realization of those programmes compelling the producers to terminate their activity

9. The right to use financial contributions shall be specified in the definitely expressed criteria of those programmes that compel the producers to terminate their activity in the production of the farm products or by means of transformation of the agricultural production into non-agricultural production.

Such contributions shall depend on complete and permanent termination of the production of the farm products.

Assistance in structural reconstruction by means of realization of the programme in termination of using resources in the production process

10. The right to use financial contributions shall be specified in the definitely expressed criteria of those programmes that have been worked out for the purpose of termination of use of land and other resources, including live-stock.

Financial contributions shall depend on exemption of land from the production of the profitable farm products for the term of not less than three years, or where it refers to the live-stock on the terms of butchery or uninterrupted and final elimination of the live-stock.

Financial contributions shall not reimburse the claimed funds where limitation of action is applicable and include demands, specification or alternate utilization of land or other resources connected with the production of the profitable farm products.

Financial contributions shall not involve the type, volume of production or prices (domestic or world prices) but only the production performed on the land or where other resources are used in such production process.

Assistance in structural reconstruction by means of realization of programme in promotion of investments

11. The right to use financial contributions shall be specified in the definitely expressed criteria of those programmes of the government worked out for the purpose of giving assistance in financial or material reconstruction of the national industry because of the structural losses existence of which has been expressly evidenced. The right to use such financial contributions may be also based on the accurately defined provisions of the programmes of the governments pursuant to re-privatization of the agricultural lands.

In any year after termination of the basic period the amount of such contributions shall not depend (or stipulated by) on:

- the type or volume of production (including live-stock) realized by a national producer provided that this provision does not contradict to the criteria laid down in sentence six of this paragraph;
- national or world prices for any products to be realized.

Financial contributions shall be used only within the term deemed to be necessary for realization of investments intended therefore.

The conditions of use by a national producer of such contributions shall not include undertakings, or specify the farm products to be made by such producer, except those definite products the production of which has been prohibited.

Financial contributions shall be limited to the amount necessary to reimburse structural losses.

Payments pursuant to environmental protection programmes

12. The right to use financial contributions shall be specified in the definitely expressed criteria of those programmes of the government worked out for the purpose of protection or preservation of environment and depend on adherence to special conditions including those connected with the methods of production or inputs.

The amount of contributions shall be limited to the amount of additional costs or income losses pursuant to fulfilment of the definite programme of the government.

Financial contributions in a framework of regional support programmes

13. The right to use financial contributions shall be given only to the producers of those disadvantaged and/or unfavourable regions. Any such region shall:

- be geographically determined zone with clear economic and administrative indice;
- be treated as.

ANNEX 5

TO THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS" OF 22 DECEMBER 1998, NO. 331-XIV

LIST

OF THE DEVELOPING COUNTRIES - MEMBERS OF WTO WHICH ENJOY PREFERENTIAL CONDITIONS PURSUANT TO THE ARTICLE 36 OF THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS"

Customs code	**Country**
516	Bolivia
276	Ghana
260	Guiana
456	Dominican Republic
382	Zimbabwe
664	India
700	Indonesia
301	Cameroon
346	Kenya
272	Cote d'Ivoire
318	Congo
204	Morocco
240	Nigeria
432	Nicaragua
662	Pakistan
248	Senegal
709	Philippines
669	Sri Lanka

ANNEX 6

TO THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS" OF 22 DECEMBER 1998, NO. 331-XIV

LIST

OF THE LEAST DEVELOPED COUNTRIES - MEMBERS OF WTO WHICH ENJOY PREFERENTIAL CONDITIONS PURSUANT TO THE ARTICLE 36 OF THE ACT OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS"

Customs code	Country
224	Sudan
228	Mauritania
232	Mali
236	Burkina Faso
240	Niger
244	Chad
247	Cape Verde
252	Gambia
257	Guinea-Bissau
260	Guinea
264	Sierra Leone
268	Liberia
280	Togo
284	Benin
306	Central African Republic
310	Equatorial Guinea
311	Sao Tome and Principe
322	Zaire
324	Rwanda
328	Burundi
334	Ethiopia
336	Eritrea
338	Djibouti
342	Somali
350	Uganda
352	Tanzania
366	Mozambique
370	Madagascar
375	Comoro Islands
378	Zambia
386	Malawi
391	Botswana
395	Lesotho
452	Haiti
653	Yemen
660	Afghanistan
666	Bangladesh
667	the Maldives
672	Nepal
675	Bhutan
676	Burma
684	Laos
696	Kampuchea
806	the Solomon Islands
807	Tuvalu
812	Kiribati
816	Vanuatu
817	Tonga
819	Western Samoa

ANNEX 7

TO THE LAW OF UKRAINE "ON PROTECTION OF NATIONAL INDUSTRY AGAINST SUBSIDIZED IMPORTS" OF 22 DECEMBER 1998, NO. 331-XIV

General principles of a subsidy

1. Where a government grants or maintains a subsidy including prices and income support which directly or indirectly stipulates increase in exports from its territory or decrease in imports to its territory such governments shall notify other interested countries in writing of the amount and nature of subsidization, of estimated consequent impact of such subsidization on the volume of product or products imported to its territory or exported from its territory and of the circumstances which have lead to subsidization. If such subsidization causes the sufficient injury or there is threat to cause the sufficient injury to the interests of other country, a country which grants a subsidy shall discuss on demand a possibility to restrict subsidization with other interested country or countries.

Additional provisions for the export subsidy

2. The granting of a subsidy to a particular product may negatively effect either importing or exporting countries, may cause unjustified violation of their practiced commercial interests and hinder their adherence to generally recognized principles and rules of the international commercial law in a sense of the agreements and documents GATT/WTO.

3. The countries shall be restricted to subsidization of an exporting primary product. Where the country directly or indirectly grants a subsidy which lead to increase in the volume of the particular primary product exported from its territory, such subsidy shall be so granted that the country in question would not have a greater share than a just one in the world export trade in such products pursuant to the shares of other countries trading in such products during prior appropriate period and special factors which may have a negative consequent impact on the trading in question.

4. The countries shall not subsidize directly or indirectly the exports other than a primary product at a lower price than a comparable price practiced on the domestic market by the buyers of the like product which effect the export sales of the like product.

5. Every now and then the countries shall review the provisions of the international commercial law for the purpose to clarify from the acquired experience whether such provisions could effectively prevent subsidization to cause sufficient injury to commerce or interests of the appropriate countries.

6. Exemption of exports from payable duties or taxes levied on the product to be consumed on a domestic market, or decrease in the amount of such duties or taxes not exceeding those payable shall not be a subsidy.

7. Pursuant to the By-laws of the International Monetary Fund the countries may effect numerous changes in currency exchange.

8. A fact that the country has not exported the product under anti-subsidizing investigation during prior appropriate period shall not hinder this country to have the right to a share in trading with such product.

9. The procedures directed for stabilization of the domestic price for a primary product, or the gross income of the domestic producers of such product irrespective of dynamics of prices which lead to export sale of such product at a lower price than a comparable one which practiced on the domestic market by the buyers of the like product, shall not be an export subsidy provided that:

such procedures have resulted in, or intended to result in export sale of such product at a higher price than a comparable one practiced on a domestic market by the buyers of the like product;

pursuant to effective legal regulation of business, or to other reasons the application of such procedures shall prevent stimulation of extra exports or infliction of other sufficient injury to the interests of other countries.

The measures applied for the purpose of the performance of aforementioned procedures may become an object of investigation if their full or partial financing is secured by means of contributions from the state funds in addition to the monies of the producers of the product in question.

10. The provisions of this Annex shall apply pursuant to the principles and norms of the international commercial law within the meaning of the Agreements and documents GATT WTO.

THE LAW OF UKRAINE

THE LAW "ON APPLICATION OF SAFEGUARD MEASURES AGAINST IMPORTS TO UKRAINE", 22 DECEMBER 1998, NO.332-XIV (WITH CHANGES AND AMENDMENTS)

As amended and added by the Laws of Ukraine N 1595-III of 23 March 2000, N 663-IV of 3 April 2003, N 860-IV of 22 May 2003, N 3028-IV of 1 November 2005, N 252-VI of 10 April 2008, N 4496-VI of 13 March 2012, N 5060-VI of 5 July 2012

(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 22 May 2003)

For the purpose of establishing mechanisms for protection of the interests of national producer[2] this Law shall regulate the principles and procedure of initiation and execution of safeguard 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 1 November 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 safeguard 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 1 November 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 safeguard anti-dumping investigation in accordance with part two of the Article 9 of this Law and who is taking an active part in safeguard investigation by providing written evidences or other information sufficient to the purposes of this investigation. The interested parties could be:

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

[2] The term "national producer" used in this Law is analogue to the term "domestic industry" used in WTO Agreement on Safeguards.

- 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 1 November 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 1 November 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. **safeguard 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 1 November 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 International Trade Commission (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 1 November 2005)

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

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 safeguard investigation of imports of the commodity;
- on applying preliminary safeguard 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 safeguard measures in respect of the imports of the commodity that are the object of investigation;
- on discontinuing safeguard investigation without application of safeguard measures;
- on alleviating safeguard measures in respect of the imports of the commodity;
- on review of safeguard measures in respect of the imports of the commodity;
- on cancelling safeguard 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 1 November 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 SAFEGUARD INVESTIGATION

Article 8. General Provisions for Execution of Safeguard Investigation

1. A safeguard 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 1 November 2005)

3. The term of duration of a safeguard 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. Safeguard 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 safeguard investigation and authorize the

Ministry to carry out such investigation and give public notice in the newspaper on initiation of a safeguard 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 safeguard investigation, the Commission shall make an appropriate decision on inexpediency of initiation of a safeguard 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 safeguard 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 safeguard investigation;

2. the information on the product imported to Ukraine which is subject to a safeguard investigation;

3. clause 3 of part 2 of Article 9 is deleted;

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

4. a brief report (hereinafter referred to as summary) of the evidences on the basis of which a safeguard 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 favour 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 safeguard 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 safeguard 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 safeguard investigation, with requirement for the hearing to be held at the Ministry in the matters of a safeguard investigation with their participation therein:

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

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

5. The interested parties participating in the hearings pursuant to the matters of a safeguard 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 safeguard 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 safeguard 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 safeguard 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 safeguard 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 safeguard 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 safeguard 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 safeguard investigation;

2. to notify the Cabinet of Ministers of Ukraine, Service and interested parties of the termination of a safeguard investigation;

3. to give an appropriate public notice in the newspaper pursuant to a decision made.

9. In the course of a safeguard 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 safeguard investigation the Ministry shall submit a report to the Commission on the results thereof.

2. While reviewing the report on results of a safeguard 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 1 November 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 safeguard 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 safeguard 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 1 November 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 1 November 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 safeguard investigation.

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

A rate of a safeguard 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, which are normally payable in cases of importation to Ukraine.

(paragraph two of part three of Article 11 is amended pursuant to the Law of Ukraine of 13 March 2012 N 4496-VI)

A safeguard 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 safeguard 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 safeguard 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 safeguard duty.

2. continuation by the Ministry of a safeguard 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 safeguard duty.

An importer shall submit to the Service an application on refund of the paid amounts of a safeguard 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 safeguard 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 safeguard 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 safeguard duty shall be duly justified if it sets out accurate information on the paid amounts of a safeguard 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 safeguard 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 safeguard 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 safeguard 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 1 November 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 safeguard investigation must not be disclosed.

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

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

1. In the course of a safeguard 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 1 November 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 3 April 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 1 November 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 1 November 2005)

According to article 17 of this Law the Ministry publishes in newspaper information on the results of analysis of the investigated matter and proof of relevance to the investigation of the factors examined.

(paragraph seven was added to part two of Article 13 according to the
Law of Ukraine N 252-VI of 10 April 2008)

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 safeguard 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 1 November 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 safeguard 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 1 November 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 safeguard investigation.

(part seven of Article 14 is in the wording
of the Law of Ukraine N 3028-IV of 1 November 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".

(paragraph two of part eight of Article 14
is in the wording of the Law of Ukraine of 05 July 2012 N 5060-VI)

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);
- declaring (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 1 November 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
N 3028-IV of 1 November 2005)

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

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

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

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

The safeguard 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 safeguard 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 3 April 2003)

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

- completion and the results of a safeguard 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 safeguard investigation, periods of validity of the permission to imports, volumes of quotas and (or) rate of safeguard 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 3 April 2003, N 3028-IV of 1 November 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 safeguard 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 1 November 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 safeguard investigation, during preceding period.

(part seven of Article 16 is in the wording
of the Law of Ukraine N 3028-IV of 1 November 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 safeguard 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 safeguard investigation without applying safeguard 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 safeguard investigation.

(a new part was added to Article 16 according to the Law of Ukraine N 3028-IV of
1 November 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 1 November 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 safeguard 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 safeguard 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 safeguard 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 safeguard investigation setting out safeguard, 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.

5. The Ministry publishes in newspaper information on the facts discovered and findings on all actual and legal aspects of the matters mentioned in the article.

(part 5 of Article 17 was amended by the
Law of Ukraine N252-VI of 10 April 2008)

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 1 November 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 1 November 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 1 November 2005)

The period of application of the safeguard 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 1 November 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 1 November 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 1 November 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 1 November 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 1 November 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%, at the condition that, collective import share of developing countries – Members of WTO is not more than 9% of total imports to Ukraine.

(Article 21 as amended according to
the Law of Ukraine N 663-IV of 3 April 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 safeguard 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 3 April 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
Kyiv
22 December 1998
N 332-XIV

ABSTRACT FROM THE LAW OF UKRAINE NO 959-XII OF 16 APRIL 1991 "ON FOREIGN ECONOMIC ACTIVITY" (ARTICLES 1, 9 AND 31) RELEVANT TO ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD MEASURES IN THE MEANING OF WTO AGREEMENTS ON THE IMPLEMENTATION OF ARTICLE VI, ON SUBSIDIES AND COUNTERVAILING MEASURES, AND ON SAFEGUARDS

RELEVANT AMENDMENTS TO THE LAW "ON FOREIGN ECONOMIC ACTIVITY" WERE INTRODUCED BY THE LAWS NO 335-XIV OF 22 DECEMBER 1998, NO 360-V OF 16 NOVEMBER 2006.

LAW OF Ukraine

ON FOREIGN ECONOMIC ACTIVITY

(Changed and amended according to
Law of Ukraine
No 2139-12 of 19 February 1992;
Resolutions of the Supreme Council of Ukraine
No 2330-12 of 12 May 1992;
No 2489-12 of 23 June 1992;
Decrees of the Cabinet of Ministers of Ukraine
No 6-92 of 9 December 1992;
No 4-93 of 11 January 1993;
No 6-93 of 12 January 1993;
No 15-93 of 19 February 1993;
No 25-93 of 17 March 1993;
Laws of Ukraine
No 3898-12 of 1 February 1994;
No 68/95 of 15 February 1995;
No 75/95 of 28 February 1995;
No 82/95 of 2 March 1995;
No 90/95 of 14 March 1995)
No 335-XIV of 22 December 1998;
No 1182-XIV of 21 October 1999;
No 1595-III of 23 March 2000;
No 1807-III of 08 June 2000;
No 2953-III of 17 January 2002;
No 3047-III of 07 February 2002;
No 362-IV of 25 December 2002;
No 762-IV of 15 May 2003;
No 860-IV of 22 May 2003;
No 1294-IV of 20 November 2003;
No 1315-IV of 20 November 2003;
No 2157-IV of 04 November 2004;
No 2709-IV of 23 June 2005;
No 3078-IV of 15 November 2005;
No 3268-IV of 22 December 2005
No 139-V of 14 September 2006
No 358-V of 16 November 2006
No 360-V of 16 November 2006
No 253-VI of 10 April 2008
No 2388-VI of 1 July 2010,
No 2856-VI of 23 December 2010,
No 3610-VI of 7 July 2011,
No 4436-VI of 23 February 2012,
No 4496-VI of 13 March 2012,
No 5060-VI of 5 July 2012

(For the official construction of the Law refer to Decision of the Constitutional Court of Ukraine No 16-rp/98 of 26 November 1998)
(In the title and body of the text of this Law the words "Ukrainian Soviet Socialist Republic", "Ukrainian SSR," "Government", "Council of Ministers of the Ukrainian SSR", "Ministry of Foreign Economic Contacts of the Ukrainian SSR", "State Department for Customs Control of the Ukrainian SSR", and "court or arbitration" replaced, accordingly, by the words "Ukraine", "Cabinet of Ministers of Ukraine", "Ministry of Economy of Ukraine", "Customs Service of Ukraine" and "court" according to Law of Ukraine No 335-XIV of 22 December 1998)
(Throughout the text hereof, the words "Ministry of Foreign Economic Contacts and Trade" in all cases have been replaced with the words "Ministry of Economy" in appropriate cases according to Law of Ukraine No 1595-III of 23 March 2000)
(Throughout the text hereof, the words "Ministry of Economy of Ukraine" in all cases have been replaced with the words "central economic policy executive agency" according to Law of Ukraine No 860-IV of 22 May 2003)

Chapter I. GENERAL PROVISIONS

Article 1. Terms Definitions

For the purpose of this Law the below specified terms shall be used in the following meaning

Audit - a revision of open accounts, stock-taking, constituent documents and other information on financial-economic activities of business entities with a view of establishing the authenticity of the accounts, stock-taking, its completeness and correspondence to the legislation and norms in force.

(Paragraph 2 of Article 1 in the wording of Law of Ukraine No 90/95 of 14 March 1995)

Currency money - values in currency:

- foreign currency in cash,
- payment documents (checks, promissory notes, bills of exchange, deposit certificates, letters of credit and others) in foreign currency;
- securities (shares, bonds, coupons for them, promissory notes) in foreign currency,
- gold and other precious metals in bullion, plates, coins and also certificates, bonds, warrants and other securities with their nominal in gold, precious gems;

Economic activity - any type of activity, including business undertakings, connected with production and material and non-material exchange in form of goods;

Dumping shall be understood as importation1 of goods at prices lower than the comparable prices of similar goods in the country of export, thus damaging the domestic producers of such goods;

(Paragraph 9 of Article 1 in the wording of Law of Ukraine No 335-XIV of 22 December 1998)

Export (export of goods) shall be understood as sales of goods by Ukrainian business entities in the foreign trade sphere (including such sales with payments made in other than the pecuniary form) with or without transferring these goods across the customs border of Ukraine, including re-export of goods. In this context re-export (re-export of goods) indicates sales to foreign business entities and exportation of previously imported goods;2

(Paragraph 10 of Article 1 in the wording of Law of Ukraine No 335-XIV of 22 December 1998)

Export (import) of capital - forwarding outside Ukraine (bringing to Ukraine) of capital in any form (currency money, goods, services, jobs, copy rights and other non-property rights) for the purpose of receiving incomes from productive and other forms of economic activities;

Foreign economic activity - activities of economic entities of Ukraine and foreign economic entities, based on mutual relations between them, which take place both on the territory of Ukraine and abroad;

Foreign economic agreement (contract) - a materially formed agreement between two or more foreign economic entities and their foreign counteragents, aimed at establishing, changing or terminating their mutual rights and duties in foreign economic activities;

Import (import of goods) shall be understood as acquisition (including purchase with payments made in other than the pecuniary form) of goods by Ukrainian business entities from foreign counterparts, with or without importation of these goods, including such purchases made for own consumption by institutions and organisations of Ukraine located beyond its borders;

(Paragraph 14 of Article 1 in the wording of Law of Ukraine No 335-XIV of 22 December 1998)

Foreign currency:

- currency in cash, monetary units (banker's bills, state treasury notes, coins) in circulation and be legal as payment means on the territory of a respective foreign country and also withdrawn from the circulation monetary units be subject of exchange for currently valid monetary units,
- payment documents in monetary units of foreign countries and international currency units;
- money in monetary units of foreign countries, international currency units and Ukrainian national currency with free conversion, which are on accounts and deposits in banking-credit institutions on the territory of Ukraine and abroad;

Foreign investments - all types of property and intellectual values, invested by foreign economic entities into Ukraine, resulting in incomes (profits) or some social effect;
Foreign economic entities - subjects of economic activities, permanently locating or residing outside Ukraine;

(Paragraph 20 of Article 1 changed and amended according to Law of Ukraine No 2157-IV of 04 November 2004)

Quotas (contingents) global - quotas for goods without specification of countries (groups of countries), where goods are exported or from which goods are imported;

Quotas (contingents) of group nature - quotas for goods with specification of countries, where goods are exported or from which goods are imported;

Export (import) quota - limit in volume for some category of goods, permitted for export from Ukraine (import to Ukraine) during the established term and which is set up in products or cost units;

Quotas (contingents) individual - quotas for goods with specification of a definite country, where goods may be exported or from which goods may be imported;

Paragraph 25 of Article 1 is expelled.

(Paragraph 25 was added to Article 1 according to Law of Ukraine No 335-XIV of 22 December 1998
Paragraph 25 was expelled according to Law of Ukraine No 360-V of 16 November 2006)

Paragraph 26 of Article 1 is expelled.

(Paragraph 26 was added to Article 1 according to Law of Ukraine No 335-XIV of 22 December 1998
Paragraph 26 was expelled according to Law of Ukraine No 360-V of 16 November 2006)

Special quotas shall be understood as a marginal import volume enforced with regard to certain goods subject to a special investigation and/or special measures, and which goods are allowed to be imported over a certain period, expressed in natural and/or cost units of measurement;

(Paragraph 27 was added to Article 1 according to Law of Ukraine No 335-XIV of 22 December 1998)

Paragraph 28 of Article 1 is expelled.

(Paragraph 28 was added to Article 1 according to Law of Ukraine No 335-XIV of 22 December 1998
Paragraph 28 was expelled according to Law of Ukraine No 360-V of 16 November 2006)

Paragraph 29 of Article 1 is expelled.

(Paragraph 29 was added to Article 1 according to Law of Ukraine No 335-XIV of 22 December 1998
Paragraph 29 was expelled according to Law of Ukraine No 360-V of 16 November 2006)

Special license shall be understood as a properly executed right to import, over a certain period, certain goods subject to a special investigation and/or special procedures.

(Paragraph 30 was added to Article 1 according to Law of Ukraine No 335-XIV of 22 December 1998 due to this, paras 25 - 46 shall be read as parts 31- 52 respectively)

Open license (individual) - a permit for export (import) of goods during a set up term (but no less than one month) with specification of its total volume;

General license - an open permit for export (import) operations for specified goods and/or a specified country (group of countries) during the validity term for license;

Export (import) license - a right for export (import) of specified goods or currency money for investments and crediting during a set up term;

Single license (individual) - a one-time permit given to a certain entity for realisation of an individual operation by a specified foreign economic entity for the period no shorter than one required for realisation of export (import) operation;

Customs regulation - regulation of issues relating to the establishment of customs duties and other taxes administered at the time of the goods' crossing the customs border of Ukraine, through the customs control procedures, organisation of activities of customs control bodies of Ukraine

(this paragraph of Article 1 is amended pursuant to the Law of Ukraine of 13 March 2012 No. 4496 VI)

International co-operation - co-operation of two or more economic entities, provided at least one of them is foreign, for joint design or production, joint realisation of finished products and other goods based on specialisation in production of half-finished products (spare parts, units, materials, equipment used in complex units) or specialised in technological phases (functions) of scientific-research works, production and realisation with co-ordination of respective programs for economic activities;

Moment of realisation of export (import) contract - moment, when all obligations under the concluded contract, including forming instruments (bills of exchange) or concluding credit agreements;

Moment of realisation of export (import) - moment, when goods cross customs border of Ukraine or property rights for specified goods, exported or imported, is transferred from seller to buyer;

(Paragraph 38 of Article 1 changed and amended according to Law of Ukraine No 2157-IV of 04 November 2004)

Moral damage - a non-material damage caused to foreign economic entities and which resulted or may result in material losses;

Limited business practice - realisation of individual or collective measures to limit competitiveness and monopolise production, division, exchange, consumption of goods and receiving superprofits;

Transfer of currency money outside Ukraine - a transfer of (currency) money for the benefit (to an account) of a foreign economic entity or to a banking-credit institutions, which is not an economic entity of Ukraine;

Advance import deposits - investments made by foreign economic entities to non-interest banking accounts, which serve them on the territory of Ukraine, for the period from the validity date of the agreement (contract) until the transfer of goods under this agreement (contract) across the customs border of Ukraine or transfer of goods by foreign economic entities on the territory of Ukraine, money in the currency under the agreement (contract) to the amount, established in set up interests to the cost of respective agreement (contract);

(Paragraph 42 of Article 1 changed and amended according to Law of Ukraine No 2157-IV of 04 November 2004)

Permanent location - location of the officially registered chief managing body of a foreign economic entity;

Permanent residence - residence on territory of a country for no less than one year for a physical person, who does not have a permanent residence on territories of other countries and having an intention to live on the territory of this country, provided this choice of residence is not motivated by official duties or duties under the agreement (contract);

Representative office of foreign economic entity - establishment or person, who represents interests of a foreign economic entity in Ukraine and has duly formed respective powers;

Special economic zone - territory, on which a respective law of Ukraine establishes a special legal regime for economic activities and special procedure for accomplishment and validity of the legislation of Ukraine;

Joint business (economic) activity - an activity based on co-operation of Ukrainian and foreign economic entities and share of results and risks of its realisation;

Joint ventures - enterprises based on joint capital of Ukrainian economic entities and foreign countries, joint managing and share results and risks of their activities;

(Paragraph 48 of Article 1 changed and amended according to Law of Ukraine No 2157-IV of 04 November 2004)

Goods - any products, services, jobs, intellectual property rights and other non-property rights allotted for sale;

Goods group - a group of homogeneous goods under the designed system and codes;
Transit of goods – the moving of goods through the territory of Ukraine without using these goods in any way in the this territory;

(this paragraph of Article 1 is in the wording of the Law of Ukraine of 13 March 2012, No. 4496-VI)

Lost profit - income or profit which a person engaged in foreign economic activity could receive as a result of performing a foreign economic transaction and which was not received due to circumstances not dependent on this person, provided that the amount of such income or profit can be substantiated.

(the paragraph was added to Article 1 pursuant to the Law of Ukraine of 04 February.2009 No. 923-VI, and a paragraph of Article 1 was left out pursuant to Law of Ukraine of 13 March 2012 No. 4496-VI)

Article 9. Bodies for State Regulation of Foreign Economic Activities

The supreme body, realising the state regulation of foreign economic activities, is the Verkhovna Rada[3] of Ukraine. The competence of the Verkhovna Rada of Ukraine shall include:

- adoption, change and termination of laws as to foreign economic activities;
- approval of main directions of the foreign economic policy of Ukraine;
- consideration, approval and change of the structure of bodies for the state regulation of foreign economic activities;
- concluding international agreements of Ukraine in accordance with the laws of Ukraine on international agreements of Ukraine and bringing the current legislation of Ukraine into accord with the regulations, provided by these agreements;

Paragraph 6 of Part 1 of Article 9 has been suspended.

(The validity of Paragraph 6 of Part 1 of Article 9 has been suspended according to Decree No 15-93 of February 19, 1993)

- setting up special regimes for foreign economic activities on the territory of Ukraine in accordance with articles 24, 25 of this Law;
- approval of lists of goods the export and import of which is prohibited in accordance with articles 16, 17 of this Law.

(paragraph 8 of part 1 of Article 9 is amended
pursuant to Law of Ukraine of 16 November 2006 No. 360-V)

making decisions on application of measures in response to discriminatory and/or hostile actions of other states, customs unions or economic associations by way of imposing a complete/partial prohibition (complete/partial embargo) on trade; revoking the most-favoured-nation treatment or a privileged special treatment.

(paragraph nine was added to part one of Article 9
pursuant to Law of Ukraine of 23 February 2012 No. 4436-VI)

The Cabinet of Ministers of Ukraine shall:

- take measures to carry out the foreign economic policy of Ukraine in accordance with laws of Ukraine;
- coordinate activities of ministries, state committees and governmental departments of Ukraine for regulation of foreign economic activities; co-ordinate the work of trade representations of Ukraine in foreign countries;
- take normative acts for managing foreign economic activities, where it is provided by the laws of Ukraine;
- negotiate and conclude international agreements of Ukraine on foreign economic activities, where it is provided by the laws of Ukraine on international agreements of Ukraine, provide realisation of international agreements of Ukraine on foreign economic activities by all state managing bodies, subordinated to the Cabinet of Ministers of Ukraine;
- within their competence, set up by the laws of Ukraine, submit for consideration to the Verkhovna Rada of Ukraine proposals on the system of ministries, state committees and governmental departments - bodies of operative state regulation of foreign economic

[3] Verkhovna Rada shall mean the Parliament of Ukraine

activities, which powers can not be superior to the powers of the Cabinet of Ministers of Ukraine, which it has in accordance with the laws of Ukraine;
- ensures preparation of the balance of payment and the consolidated foreign exchange plan of Ukraine;
- paragraph 8 of part 2 of article 9 is left out

(paragraph 8 of part 2 of article 9 is amended pursuant to Law of Ukraine of 04 February 2009 No. 923-VI and the Ruling of the Constitutional Court of Ukraine of 23 June 2009 No. 15-rp/2009, left out in accordance with Law of Ukraine of 13 March 2012 No. 4496-VI)

- take measures to ensure rational use of money of the State currency fund of Ukraine;
- ensure the implementation of decisions of the United Nations Security Council on issues related to foreign economic activities.

(The Paragraph added to Part 2 of Article 9 according to Law of Ukraine No 362-IV of 25 December 2002)

make decisions on application of measures in response to discriminatory and/or hostile actions of other states, customs unions or economic associations by introducing a licensing regime.

(paragraph 11 was added to part 2 of Article 9 pursuant to Law of Ukraine of 23 February 2012 No. 4436-VI)

The National Bank of Ukraine shall:
- provide keeping and use of the gold and currency reserve of Ukraine and other state values, which provide for Ukraine ability to pay;
- represent interests of Ukraine in relations with the central banks of other countries and other financial-credit institutions and conclude respective interbank agreements;
- regulate the rate of the national currency of Ukraine to monetary units of other states;
- prepare reports and accounts as to state credits and loans, realise operations with centralised currency resources, which are allotted from the State currency fund of Ukraine to the disposal of the National Bank of Ukraine;

Paragraph 6 of Part 3 of Article 9 has been suspended.

(The validity of Paragraph 6 of Part 3 of Article 9 has been suspended according to Decree No 25-93 of 17 March 1993)

- realise other functions in accordance with the Law of Ukraine "Banks and Banking Activities" and other laws of Ukraine. The National Bank of Ukraine may delegate these functions to a bank for realisation of foreign economic activities of Ukraine.

The central economic policy executive agency of Ukraine shall:

- provide a single foreign economic policy during foreign economic activities exercised by foreign economic entities coming out to the foreign market, co-ordination of their foreign economic activities, including following the international agreements of Ukraine;
- exercise control over all foreign economic entities follow the current laws of Ukraine and the conditions under international agreements;

(Pargraph 4 of Part 4 of Article 9 has been suspended according to Decree of the Cabinet of Ministers of Ukraine No 6-93 of 12 January 1993)

- carry out antidumping, anti-subsidy, and special investigations in keeping with procedures established by the laws of Ukraine;

(Paragraph 5 was added to Part 4 of Article 9 according to Law of Ukraine No 335-XIV of 22 December 1998)

- fulfil other functions in accordance with the laws of Ukraine and the Regulations on the central economic policy executive agency.

The Customs Service of Ukraine shall:

- exercise customs control in Ukraine in accordance with the Ukrainian legislation in force;
The Antimonopoly Committee of Ukraine shall:
- exercise control over foreign economic entities' observing the legislation on the protection of the economic competition.

(Part 6 was added to Article 9 according to Law of Ukraine No 82/95 of 2 March 1995; changed and amended according to Law of Ukraine No 1294-IV of 20 November 2003)

Interdepartmental Commission on International Trade shall:

- exercise on-line state regulation of foreign trade activities in Ukraine in keeping with the laws of Ukraine;
- make decisions relating to the commencement and execution of antidumping, anti-subsidy or special investigations, and antidumping, countervailing or special measures.

(Part 7 was added to Article 9 according to Law of Ukraine No 335-XIV of 22 December 1998).

- make decisions on application of measures in response to discriminatory and/or hostile actions of other states, customs unions or economic associations within the competence established by laws of Ukraine.
- (paragraph four was added to part 7 of Article 9 pursuant to Law of Ukraine of 23 February 2012, No. 4436-VI)

Article 31. Measures against Unfair Competition and Growing Import in the Foreign Trade Sphere

Unfair competition in the foreign trade sphere shall be understood as

- dumping import subject to antidumping measures;
- subsidised import subject to countervailing measures;
- other acts recognised as unfair competition under the laws of Ukraine.

Growing import shall be understood as imports in amounts and/or in conditions causing considerable damage or threatening such damage to Ukrainian producers of such goods.

Proceeding from the results of antidumping, anti-subsidy or special investigations carried out under the laws of Ukraine, decisions shall be made on antidumping, countervailing or special measures, which decisions may be appealed from in due course of law within one month from the date of commencement thereof, in keeping with procedures established by the laws of Ukraine.

Free trade, preferential, and special preferential trade regimes (frontier (coastal) trade, special (free) economic areas, and other procedures envisaged by the laws of Ukraine), customs and other privileges effective when importing goods subject to antidumping, countervailing or special measures shall be suspended for the duration of the above procedures.

(Article 31 as amended by the Laws of Ukraine No 75/95-VR of 28 February 1995, No 82/95-VR of 02 March 1995; in the wording of Law No 335-XIV of 22 December 1998)

CABINET OF MINISTERS OF UKRAINE

RESOLUTION OF THE CABINET OF MINISTERS OF UKRAINE ON APPROVING THE PROCEDURE FOR PROTECTING INTERESTS OF DOMESTIC PRODUCERS DURING THE CONDUCT BY FOREIGN COUNTRIES, THEIR ECONOMIC OR CUSTOMS UNIONS OF ANTIDUMPING, SPECIAL SAFEGUARD AND COUNTERVAILING INVESTIGATIONS IN RESPECT OF IMPORTS OF UKRAINIAN ORIGIN

of 7 June 2006 No. 801

Kyiv

As amended in accordance with Resolution of the Cabinet of Ministers of Ukraine of 1 June 2011 No. 578

To enhance the protection of domestic producers' interests and ensure free access of goods of Ukrainian origin to the foreign market, the Cabinet of Ministers of Ukraine hereby resolves:

To approve the Procedure for protecting interests of domestic producers during the conduct by foreign countries, their economic or customs unions of antidumping, special safeguard and countervailing investigations in respect of imports of Ukrainian origin (attached).

Prime Minister of Ukraine **Yu. Yekhanurov**

Ind. 27

APPROVED
by Resolution of the Cabinet of Ministers of Ukraine
of 7 June 2006, No. 801

PROCEDURE
FOR PROTECTING INTERESTS OF DOMESTIC PRODUCERS DURING THE CONDUCT BY FOREIGN COUNTRIES, THEIR ECONOMIC OR CUSTOMS UNIONS OF ANTIDUMPING, SPECIAL SAFEGUARD AND COUNTERVAILING INVESTIGATIONS IN RESPECT OF IMPORTS OF UKRAINIAN ORIGIN

(Throughout the Procedure's text the term "Ministry of Economic Development and Trade" has been replaced with the words "Ministry of Economic Development and Trade" in respective deflections pursuant to the Resolution of the Cabinet of Ministers of Ukraine of 1 June 2011 No 578)

1. This Procedure shall stipulate the mechanism for the effectuation by central executive authorities of the protection of interests of domestic producers that are carrying out transactions to supply Ukrainian-origin goods at the time when foreign countries, their economic or customs unions conduct antidumping, special safeguard and countervailing investigations in respect of imports of such goods (the "investigations").

2. The Ministry of Economic Development and Trade shall ensure the protection of interests of domestic producers at the time when an investigation is being conducted.

The Ministry of Foreign Affairs, using foreign diplomatic missions of Ukraine and other central executive authorities, shall assist the Ministry of Economic Development and Trade in carrying out such protection, including in organization of foreign business travel at the time of performing such protection.

The Ministry of Economic Development and Trade may contact, acting through the Ministry of Foreign Affairs, Ukraine's diplomatic missions abroad to ensure that protection is provided with respect to the interests of domestic producers during the investigation, as well as address them with requests to provide informational and analytical materials and statistical data concerning the state of the market of the respective host country.

(clause 2 is in the wording of the Resolution of the Cabinet of Ministers of Ukraine of 01 June 2011 No. 578)

3. Ukraine's diplomatic missions abroad shall monitor the foreign states' official sources for information concerning a risk of initiation of an investigation or a fact of such an initiation, and shall promptly report it to the Ministry of Economic Development and Trade through the Ministry of Foreign Affairs, in particular using an electronic system for information exchange.

If Ukraine's diplomatic missions abroad receive from competent bodies of respective foreign states, an economic or customs union of such states (hereinafter – the competent authorities) information regarding a filing of an application to initiate an investigation, or information concerning initiation or administration of an investigation, application of relevant measures, or other information on the substance of the investigation, the specified missions shall immediately forward this information following the applicable procedure to the Ministry of Economic Development and Trade through the Ministry of Foreign Affairs.

If Ukraine's diplomatic missions abroad receive from competent authorities the materials addressed to domestic producers, such materials shall be immediately forwarded by the specified missions directly to the addressees.

In the event of initiation of an investigation, the Ukrainian diplomatic mission abroad shall review and immediately forward to the Ministry of Economic Development and Trade through the Ministry of Foreign Affairs the statistical data concerning the volume of imports of the goods which are subject to the investigation, the dynamics of production, sales and consumption of such goods in the foreign state in question, as well as other information concerning results of the investigation and application of measures.

Interested domestic producers may directly inform the Ministry of Economic Development and Trade of an investigation being conducted.

(clause 3 is in the wording of the Resolution of the Cabinet of Ministers of Ukraine of 01 June 2011 No. 578)

4. After receiving information about the conduct of an investigation, the Ministry of Economic Development and Trade shall:

provide information to this effect to the interested central executive authorities and domestic producers and, if needed, request additional information from those relating to the investigation;

apply to the State Customs Service for information regarding export operations to supply Ukrainian-origin goods (information about exporters, importers, the value and volume of goods shipments, etc.) in respect of which the investigation is conducted.

Upon receiving an inquiry from the Ministry of Economic Development and Trade, central executive authorities and domestic producers shall promptly submit necessary information. The domestic producer may specify that the information is confidential. In this case, the Ministry of Economic Development and Trade shall ensure non-disclosure of the information.

5. The domestic producer shall, upon request or on its own initiative, inform the Ministry of Economic Development and Trade of its intention to participate in the investigation as an interested party.

If the domestic producer has not submitted the necessary information or notified of its refusal to participate in the investigation, the Ministry of Economic Development and Trade shall, based on information provided by interested central executive authorities and domestic producers, approve the decision on expedience of Ukrainian Party's participating in the investigation.

6. To ensure participation by the Ukrainian Party in the investigation, the Ministry of Economic Development and Trade shall, directly or through the Ministry of Foreign Affairs, apply within the established deadline to the competent authorities to receive the materials on the basis of which the decision was approved to conduct the investigation, and to register the Ministry of Economic Development and Trade and (or) the respective diplomatic mission of Ukraine as an interested party to the investigation.

Participation of a domestic producer in an investigation shall be ensured by way of such domestic producer's applying to the competent authority for registration as an interested party to the investigation and for further fulfillment of its rights and obligations as provided for under the legislation of the foreign states, their economic or customs unions, which are conducting the investigation.

(clause 6 is in the wording of the Resolution of the Cabinet of Ministers of Ukraine of 01 June 2011 No. 578)

7. Before competent authorities of the foreign country approve a final decision based on the results of the investigation, the Ministry of Economic Development and Trade shall be entitled to:

independently or together with representatives from the Ministry of Foreign Affairs, other central executive authorities, and interested domestic producers, initiate the conduct and participate in consultations with competent authorities regarding the investigation;

prepare a justification of the Ukrainian party's position and send it to the competent authorities;

independently or together with representatives of Ukraine's diplomatic missions abroad, the Ministry of Foreign Affairs, other central executive authorities, and interested domestic producers, participate in public events (hearings, meetings) that are held as part of the investigation;

(paragraph four of clause 7 is amended pursuant to the Resolution of the Cabinet of Ministers of Ukraine of 01 June 2011 No. 578)

conduct negotiations, if necessary, prepare and submit proposals in accordance with the established procedure regarding the entry into international treaties with foreign countries with the view to ensuring free access by Ukrainian-origin goods to the foreign market.

If the Ministry of Economic Development and Trade is unable to take part in the hearings and consultations, then representatives of Ukraine's diplomatic missions will participate in these events to present the Ukrainian party's position formulated by the Ministry of Economic Development and Trade.

(the above paragraph has been added to clause 7 pursuant to Resolution of the Cabinet of Ministers of Ukraine of 01 June 2011 No. 578)

8. The Ministry of Economic Development and Trade shall inform the interested central executive authorities of the results of the investigation.

9. If a foreign country, an economic or customs union of countries should apply antidumping, countervailing and other restrictive measures to goods of Ukrainian origin, or should they review any restrictive measures introduced earlier, the protection of domestic producers' interests shall be carried out in accordance with this Procedure.

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