

On protection measures of local market upon commodity imports

Invalidated Unofficial translation

The Law of the Republic of Kazakhstan dated 28 December, 1998 № 337. Expired by the Law of the Republic of Kazakhstan on June 8, 2015 № 316-V

Unofficial translation

Footnote. It became invalid by the Law of the Republic of Kazakhstan № 316-V on 06/08/2015 (effective thirty calendar days after the date of its first official publication).

Footnote. In the text the words are substituted – By the Law of the Republic of Kazakhstan dated 20 July, 1999 № 443.

This Law regulates the relations, arising in procedure of applying protection measures, established for the purpose of protection of domestic producer of commodity and economic safety of the Republic of Kazakhstan, for localization of national economy to the competitive conditions with import goods.

Article 1. General provisions

The following basic definitions are used in this Law:

1) temporary protection measures - preliminary protection measures, applied as safety custom by the customs bodies on the basis of the Government decree of the Republic of Kazakhstan;

2) interested persons (parties) – National chamber of entrepreneurs of the Republic of Kazakhstan; domestic producer of similar or directly competitive product, being the object of judgment, or association of domestic producers the majority participants of which produce such commodity; foreign exporter of commodity and foreign producer of commodity, being the object of judgment; native commodity importer or association of native importers the majority participants of which are importers of such commodity ; the Government of foreign country, authorized body of country of origin of goods or export of such commodity or authorized body of the union of foreign states that includes the countries of origin of such goods or its export; consumer or consumers' association of commodity; bodies of executive power of the Republic of Kazakhstan; other persons, the rights and interests of which are concerned by such judgment and which are able to support the implementation of this judgment in opinion of the authorized body, mentioned in Article 6 of this Law;

3) protection measures - complex of resources of the administrative-economic influence, applied on the basis of regulation of the Government of Republic of Kazakhstan as customs and (or) fixing up quotas on the goods delivery, which are

brought to the territory of the Republic of Kazakhstan for free circulation on its local market in such quantity (absolutely or in respect of the of domestic manufacture) and in conditions, when essential harm is inflicted or there is a threat of its infliction to the native producers of such or directly competitive product;

4) protective duties – the customs, which shall be collected by the custom bodies in excess of rates of duty, in cases of delivery any commodity to the customs territory of the Republic of Kazakhstan in such quantities and in such conditions, upon which the essential harm may be inflicted or there may be a threat of its infliction to the domestic producers of such or directly competitive product is possible;

5) import quota – limit the import of the into the territory of the Republic of Kazakhstan in respect of its quantity and (or) its value;

6) commodity import in preceding period – average quantity of commodity import for three preceding years, in respect of which there is statistical information;

7) confidential information – information, revelation of which gives the substantial odds for the competitors or has the material adverse effects for the interested party, provided information;

8) domestic industry (native producers) – assembly of producers of such or directly competitive products, carrying out the activity in the territory of the Republic of Kazakhstan, or producers, whose team production of such or directly competitive products are the major part of the general production of such products in the territory of the Republic of Kazakhstan;

9) such or directly competitive products – the products, which shall be classified by the same pattern of product combination of the foreign economic activity and shall be identic to the other commodity in full or be equitable with it by its purpose of use, appliance, quality and technical characteristics and by the other properties in such manner that customer would change or would be ready to change the other commodity by such commodity in procedure of consumption;

10) judgment - examination procedure of documents and other evidences concerning the import of any commodity into the territory of the Republic of Kazakhstan in such quantities and in such conditions, upon which the essential harm is inflicted or there is a threat of its infliction to the native producers of such or directly competitive product;

11) serious harm – essential general deterioration of situation in the branch of the of domestic manufacture of the same or directly competitive product in the Republic of Kazakhstan due to increased volume of its import into the territory of the Republic of Kazakhstan, expressing, in particular, in production cut of such commodity, realization cut of native commodity at the local market, earnings dilution of the producing such commodity, negative influence on arrangement of labour, salary level;

12) threat of serious harm – apparent inevitability of serious harm;

13) authorized body – the state body of the Republic of Kazakhstan, carrying out the monitoring of commercial and productive activity, performing the judgment on recognition of the serious harm or a threat of its infliction and necessity of introduction of protection measures.

Footnote. Article 1 as amended by the Laws of the Republic of Kazakhstan dated 20.07.1999 No. 443; dated 16.06.2005 No 59; dated 19.03.2010 No 258-IV; dated 04.07.2013 No. 130-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 2. The legislation of the Republic of Kazakhstan on protection measures of local market upon commodity import

1. This Law and other regulatory legal acts shall be related to the legislation of the Republic of Kazakhstan on protection measures of local market upon commodity import.

2. Rules of the international agreement or treaty shall be applied if the international agreement or treaty, ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law.

Article 3. Objectives of this Law

1. Objectives of this Law are protection of interests of domestic producers and elimination of serious harm or its threat due to increased volume of imported goods into the territory of the Republic of Kazakhstan.

2. Protection measures shall be applied only upon the circumstances of inflicting serious harm or its threat to the native producers in consequence of increased volumes of commodity imports in the territory of the Republic of Kazakhstan.

3. Protection measures shall be applied upon condition that the judgment was performed in accordance with the rules and procedures established in this Law.

4. Protection measures shall be applied to the imported commodity on a non-discriminatory basis, independently from the country of origin of commodity.

Footnote. Article 3 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No 443.

Article 4. Scope of application of this Law

This Law regulates relations, arising between the authorized body and all the interested persons, as well as between interested persons themselves due to increased volumes of commodity imports in the territory of the Republic of Kazakhstan of any

commodity in such quantities (absolutely or in respect of the of domestic manufacture) and in conditions, upon which essential harm is inflicted or there is a threat of its infliction to the domestic producers of such or directly competitive product.

Footnote. Article 4 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No 443.

Article 5. Bodies of state regulation

1. State regulation and monitoring of the trade practice of suppliers on facts of inflicting serious harm shall be carried out by the authorized body body.

Footnote. Paragraph 1 as amended by the Law of the Republic of Kazakhstan dated 31 January, 2006 No 125.

2. Introduction, revision and cancellation of protection measures shall be carried out by the Government decree of the Republic of Kazakhstan at the instance of the authorized body.

Article 6. Authorized body

1. Authorized body shall act within the powers, granted to it by this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. In cases provided by this Law and other regulatory legal acts of the Republic of Kazakhstan, the authorized body shall issue the regulatory legal acts within its competence on the procedures of judgment, shall perform judgment upon the application of native producer or association of producers, shall prepare materials for introduction in the Government of Republic of Kazakhstan for application of protection measures.

3. State bodies of power and other organizations shall support in performance of judgment and introduce the commodity samples on a repayable basis and required information, as well as confidential by the request of the authorized body.

Footnote. Article 6 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No 443.

Article 7. Decision on the beginning of judgment

1. Decision on the beginning of judgment shall be adopted by the authorized body by the order of the Government of the Republic of Kazakhstan, as well as on the basis of conclusion of the authorized body, prepared upon the applications of domestic producers or association of producers.

2. Request for the judgment prior to the appliance of protective measures can be taken into consideration, if the majority part of total volume of producing such or

directly competitive product in the Republic of Kazakhstan is the share of native producers of commodity, expressed their opinion on this application.

Whereas more than twenty five percent of the volume of such commodity or directly competitive product produced by the domestic producers shall be the share of domestic producers, supporting the application.

3. Authorized body shall inform the relevant foreign state (union of foreign states) on intention to begin the judgment for the purpose of possible appliance of protective measures after making a decision to start the judgment.

Footnote. Article 7 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No 443; dated 16, June, 2005 No 59.

Article 8. Filing of application

1. Application on performing the judgment shall be filled in written form to the authorized body and shall contain the following data:

1) details of the applicant and data on cost and volume of producing of such or directly competitive product for three preceding years, in respect of which statistical information is available;

2) description of imported commodity, being the object of the judgment, name of country or countries of origin of goods, list of known suppliers of this commodity;

3) data, expressing all the relevant factors of objective nature and capable for quantification, which influence on the provision in this branch, in particular:

changes in volumes of sales, producing, productivity, capacity utilization, amounts of profit and losses, on reduction of number of employees involved in production; details on change of prices on such or directly competitive product at the local market of the Republic of Kazakhstan.

2. Application may be revoked by the applicant before the beginning of the procedure of judgment and in this case shall be considered to be unfilled.

3. Applicant shall bear the responsibility for credibility of details, stated in application.

Footnote. Article 8 as amended by the Laws of the Republic of Kazakhstan dated 20.07.1999 No 443; dated 19.03.2010 No 258-IV.

Article 9. Consideration of application

1. Authorized body shall consider the credibility and sufficiency of data, stated in application and shall prepare the conclusion on viability of performing the judgment or on abandonment of performing the judgment within the term of forty five calendar days after filling the application.

2. If authorized body considers details as insufficient, it shall inform the applicant about it and provide him (her) possibility to change or add his (her) application within the term of ten days from the date of receiving the application.

In case, if the applicant directs information, which adds or changes proposed application, the date of receiving the application for consideration shall be considered as the date of registration of such additions or changes in the authorized body.

3. Authorized body shall make decision on the abandonment of performing the judgment in case, if there are no enough evidences of inflicting serious harm or its threat to the domestic producers of such commodity or directly competitive product, as well as performing the condition of paragraph 2 of Article 7 of this Law.

4. Authorized body shall notify the applicant on rejection of the proceedings, within ten days from its decision, stating the reasons and grounds for refusal. Footnote. Article 9 as amended by the Law of the Republic Kazakhstan dated 20 July, 1999 No 443.

Article 10. Beginning of the judgment

1. Authorized body shall inform the interested persons on coming judgment within thirty calendar days and publish the notification in the mass media in state and other languages for the purpose of attracting all the interested persons to the judgment from the moment of making decision on beginning of performing the judgment.

2. Notification shall include:

1) name of the state (states) of commodity exporter and name of commodity, being the object of judgment;

2) date of beginning of judgment;

3) grounds for the judgment

4) brief summary of facts, confirming the justification of application;

5) address, where interested person shall direct their materials;

6) terms upon of which the interested person may provide their materials.

3. Interested persons shall give answers in written form in state language or in another language if so agreed.

4. The judgment with the purpose of possible appliance of protection measures shall not impede the customs declaration and release of goods, being the object of the judgment in the territory of the Republic of Kazakhstan.

5. The Government of the Republic of Kazakhstan shall carry out the licensing of commodity import, being the object of judgment in the territory of the Republic of Kazakhstan without application of quantitative restrictions from the date of making decision on the beginning of judgment.

6. *Is excluded*

7. In case, if the share of one Kazakhstani producer, supported the application on applying protection measures is more than thirty five percent of Kazakhstani production of such or directly competitive product, if the total volume of commodity import, being the object of the judgment is less than twenty five percent of total volume of selling such or directly competitive product at the local market of the Republic of Kazakhstan the existence of the anti-monopoly body's conclusion on consequences of influence of the mentioned measures on business competition of the local market of the Republic of Kazakhstan shall be required.

Footnote. Article 10 as amended by the Laws of the Republic of Kazakhstan dated 20.07.1999 No. 443; dated 16.06.2005 No. 59; dated 07.07.2006 No. 174; dated 30.06.2010 No. 297-IV (shall be enforced from 01.07.2010).

Article 11. Terms of judgment

Judgment, preceding the appliance of protection measures shall be finished within nine months.

Article 12. Request for information

1. In case of necessity, after beginning of the judgment the authorized body shall have a right to request additional information from the interested persons, establishing the term, to which the answer shall be given.

2. Each interested person shall have a right to present any other evidences, which he (she) considers it necessary upon the directing information in terms established by the authorized body.

Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 13. Confidential information

1. Confidential information, provided to the authorized body in the course of inquiry progresses, shall not be divulged without written agreement of interested persons.

2. Interested persons, providing the confidential information shall provide written explanations on this information.

Explanations shall be detailed enough for understanding of sense of information or they shall explain the reasons, why presentation of more detailed non-confidential information is impossible.

Authorized body may disregard information, which the interested person doesn't wish to give publicity and disclose in general terms, in case if this information is not received from official sources.

3. Confidential information may not be divulged, used by the civil servants of the authorized body for personal purposes, transferred to third parties, as well as other state bodies, with the exception of cases, provided by the legislative acts of the Republic of Kazakhstan.

Footnote, Article 13 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443; dated 16 June, 2005 No. 59.

Article 14. Procedure for conducting the case

1. Authorized body shall conduct a case of each judgment in written form in the manner established by it. Case shall include all documents, concerning the judgment, order and period of storage of which shall be determined in accordance established by the legislation.

2. Materials of the case, which are not confidential, shall be presented to the interested persons for insight in the course of judgment and review of the case by their request.

3. Authorized body shall publish report on each judgment in official editions. The report shall include detailed review of the case with grounds of established regulation of the Government of Republic of Kazakhstan.

Footnote, Article 14 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 15. Hearings

Interested person shall have a right to file an application to the authorized body on performing the hearings for the purpose of learning materials of case and arguments of other party that shall allow to give evidences and arguments all interested persons, including the possibility to answer on requests of other persons and state their opinions on question of whether will the appliance of protection measure serve to the protection of domestic producers and economic safety of the Republic of Kazakhstan.

Hearings shall be held under the chairmanship of the civil servant of the authorized body with taking minutes.

Footnote, Article 15 as amended by the Law of the Republic of Kazakhstan dated 16 June, 2005 No. 59.

Article 16. Determination of serious harm or threat of its inflicting

1. Determination of serious harm shall be based on received data, confirmed by objective facts, by this, availability of causal relationships between increased volumes of commodity imports and inflicted serious harm or its threat shall be proved.

2. For establishing the causal link between increased volumes of commodity imports and inflicted serious harm or threat of its inflicting the authorized body shall consider all the objective factors, influencing on provision in this branch as follows:

- 1) rates and volume of increase of commodity import in absolute and relative quantities;
- 2) share of increased import in the local market;
- 3) changes in the sale level;
- 4) producing commodity by the native producers;
- 5) productivity, capacity utilization, amounts of profit and losses, arrangement of labour.

3. In case, if there are other factors, inflicting a serious harm or threatening to inflict the harm to native producers besides increased volumes of commodity imports, such harm shall not be related to increased volumes of commodity imports.

4. On basis of factual data, received in the course of judgment the authorized body shall have a right to give preliminary conclusion on availability of increased volumes of commodity imports and inflicting a serious harm to them or its threat to native producers.

Footnote. Article 16 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 17. Appliance of temporary protection measures

1. The Government of the Republic of Kazakhstan of the basis of preliminary confirmative conclusion of authorized body shall adopt the decree on appliance of the protection measures in condition of contemporary continuation of judgment.

2. Temporary protection measures shall be entered in emergency cases, if their delay may inflict serious harm to domestic industry that is difficult to compensate.

3. Temporary protection measures shall be applied by the custom bodies on basis of the Government decree of the Republic of Kazakhstan on its applying for commodity, in respect of which the judgment is enforced.

3-1. Money for ensuring of payments of protective customs upon applying the temporary protection measures shall be turn on to deposit account by importers in accordance with the custom legislation of custom union and (or) the Republic of Kazakhstan and shall not be subject to transferring into the budget before the adoption of conclusive decision by Government of the Republic of Kazakhstan on the basis of conclusion of the authorized body on necessity of application of protection measures.

4. In case if the authorized body rendered a decision by the results of judgment that the increased volume of imports doesn't inflict serious harm or its threat to the domestic producers, temporary measures shall be cancelled, and importer shall have a right to return the amount paid in accordance, established by the legislation of the

Republic of Kazakhstan. In case of recognition of applying lower rate of safety custom as viable, than the rate of safety custom upon applying temporary protection measures, unduly amount paid shall be subject to repayment to importer in the manner, established by custom legislation of the Republic of Kazakhstan.

5. In case if safety custom is applied in larger amount than the rate of temporary protection measure, than disparity for paid period the shall not to be collected from importer

Footnote. Article 17 as amended by the Laws of the Republic of Kazakhstan dated 20.07.1999 No. 443; dated 16.06.2005 No. 59; dated 30.06.2010 No 297-IV (shall be enforced from 01.07.2010); dated 26.01.2011 No. 400-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

Article 18. Publication of regulation of the Government of the Republic of Kazakhstan on applying temporary protection measures

Regulation of the Government of the Republic of Kazakhstan on applying temporary protection measures shall be published in official editions.

Publication shall contain the terms and foundation of applying temporary protection measures.

Footnote. Article 18 is in the wording of the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 19. Validities of temporary protection measures

1. Validity of temporary protection measures shall not exceed 200 days.
2. Validity of temporary protection measures shall be included in general validity of protection measures in accordance with Article 24 of this Law.

Article 20. Accomplishment of judgment

Judgment, conducted by the authorized body shall be accomplished by preparation of conclusion, directed to the Government of the Republic of Kazakhstan:

- 1) on termination of judgment due to lack of enough evidences of serious harm or its threat to the domestic producers from commodity imports, in respect of which the judgment was conducted;
- 2) on establishing the fact of existence of serious harm or its threat by increased volume of import to the commodity of domestic industry and on necessity of applying protection measures by the Government of the Republic of Kazakhstan.

Article 21. Protection measures

1. The Government decree of the Republic of Kazakhstan on applying the protection measures shall be adopted at suggestion and on basis of conclusion of the authorized body and shall be enforced from the date of its publication in official editions.

2. Protection measures shall be applied as limitation of volumes of commodity imports – establishing quota and (or) by application of safety custom.

Footnote. Article 21 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 22. Determination of rate of protection measures

1. Protection measures shall be applied in such rates, which are necessary for prevention or elimination of serious harm.

2. Rate of protection measures may not be increased throughout the whole period of its applying. Their rate may be decreased by the Government decree of the Republic of Kazakhstan on application of the authorized body through regular intervals within the period of applying, when validity period of protection measure exceeds one year.

3. If validity period of protection measure exceeds three years, repeated judgment, in result of which protection measures may be canceled, changed or extended shall be performed no later than one and half year after its application.

4. In case of extending validity period of protection measures in result of repeated judgment, conditions of applying such measures may not be more restrictive, than conditions of applying within original validity period of protection measures.

Footnote. Article 22 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443; dated 16 July, 2005 No. 59.

Article 23. Application of protection measures

1. On the basis of regulation of the Government of the Republic of Kazakhstan on applying safety customs, the custom bodies shall collect them from the entire imported commodity, in respect of which the judgment was performed. Safety customs shall be collected independently from customs duties, taxes and other compulsory payments into budget and shall be subject to enrollment into budget.

2. Upon applying the protection measures in the form of quota, annual volume of import quota shall not reduce the volumes of import lower than a level of its average volume for preceding period, with the exception of cases, when necessity of adoption of the other decision for prevention or elimination of serious harm will be proved.

Within the annual volume of import quota, applied as protection measure, the Government of the Republic of Kazakhstan may establish the import quotas for particular states.

In cases, when import quota is distributed between supplying countries, the Government of the Republic of Kazakhstan may provide the achievement of agreement on distribution of shares of import quota with supplying countries, having the interests in delivering this commodity in the territory of the Republic of Kazakhstan by performing consultation.

Upon impossibility of achievement of such agreement, the Government of the Republic of Kazakhstan shall distribute the import quota between supplying countries in a ratio, relevant to commodity import in preceding period, on the basis of general amount or cost of commodity import. By this, any factors that may influence on delivery of such commodity shall be considered.

In case of necessity, the Government of the Republic of Kazakhstan may distribute the import quota between particular supplying countries in recognition of absolute and relative increase indices of import from particular foreign states (union of foreign states).

Footnote. Article 24 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443; dated 16 June, 2005 No. 59.

Article 24. Validity period of protection measures

1. Validity period of protection measures shall be established for the period, required for prevention or elimination of serious harm and localization of native producers of commodities to the competitive conditions. This period shall not exceed four years, with the exception of cases, provided in paragraph 2 of this Article.

2. Validity period of protection measures may be extended by the Government of the Republic of Kazakhstan on the basis of application of the authorized body or on own initiative upon condition that this protection measure continues to be necessary for prevention or elimination of serious harm.

3. General period of applying the protection measures, including the period of applying any temporary measures, period of initial application and its extension shall not exceed eight years.

4. In case, if it is established that the applied measures are not acquitted, they shall be canceled or their rate shall be changed upon the application of the authorized person

Footnote. Article 24 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 25. Repeated application of protection measures

1. Protection measures may be applied repeatedly to commodities, in respect of which the protection measures are already applied only by expiry of period, equal to the term of their applying.

2. Protection measures may be applied repeatedly to commodity, if the initial term of their validity is 180 days and less, upon compliance with the following conditions:

1) no less than one year have passed from the date of applying the protection measures;

2) such protection measures were not applied to this commodity more than twice in the five years, immediately preceding the last date of applying the protection measures.

Footnote. Article 24 as amended by the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443; dated 16 June, 2005 No. 59.

Article 26. Publication of the Government decree of the Republic of Kazakhstan on appliance of the protection measures

The Government decree of the Republic of Kazakhstan on appliance of the protection measures shall be published in official editions. Publication shall also contain the reasons and foundations of acceptance or rejection of arguments or requirements of interested persons.

Footnote. Article 26 is in the wording of the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 27. Procedure for appeal of decisions

Interested persons shall have a right to appeal decisions and actions of the authorized body, adopted in period of judgment on applying the protection measures, in accordance with the legislation of the Republic of Kazakhstan in a judicial proceeding.

Footnote. Article 27 is in the wording of the Law of the Republic of Kazakhstan dated 20 July, 1999 No. 443.

Article 28. Responsibility for violation of the legislation on protection measures of local market upon commodity import

Responsibility for violation of the legislation on protection measures of local market upon commodity import shall be carried out in accordance with the Laws of the Republic of Kazakhstan.

Footnote. Article 28 is introduced by the Law of the Republic of Kazakhstan date 20 July, 1999 No. 443; dated 16 June, 2005 No. 59.

**The President
of the Republic of Kazakhstan**

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