

On Anti-dumping Measures

Invalidated Unofficial translation

The Law of the Republic of Kazakhstan dated 13 July 1999 No. 421

Unofficial translation

Footnote. Through the whole text, the words “normal price”, “Normal price” are substituted by the words “normal value”, “Normal value” by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

This Law regulates relations arising upon carrying out of anti-dumping investigation, introduction and review of anti-dumping measures for the purpose of protection of domestic producers from unfair business competition caused by import of dumping goods.

Chapter I. General provisions

Article 1. Basic definitions

The following basic definitions are used in this Law:

- 1) anti-dumping duty – duty that shall be established over the rate of the customs duty for import of dumping goods;
- 2) anti-dumping investigation – procedure for consideration of documents in respect of delivery of goods sold at the price lower than its normal value, if such sale inflicts or threatens to inflict material damage to domestic producers producing such goods;
- 3) anti-dumping measures – set of measures of administrative and economic effect applied to import of dumping goods in the form of temporary anti-dumping measures, anti-dumping duties and price undertakings for elimination of material damage or threatening of its infliction to domestic producers of such goods;
- 4) temporary anti-dumping measures – preliminary anti-dumping measures applied to import of dumping goods in the form of guaranteed money deposits and (or) guarantees of the bank of the Republic of Kazakhstan in the process of conducting anti-dumping investigation;
- 5) interdependent parties – producers or buyers (participants of transaction) linked with suppliers or that are the suppliers themselves of goods supposedly being the subject of dumping. Interdependent parties shall be recognized as individuals and (or)

legal entities the relations between whom may have direct impact on conditions or economic results of their activity or the activity of persons represented by them, as follows :

one person takes participation in the property of another person and share of such participation is more than 33 percent;

persons are married, relatives or in legal relationship of an adopter and adoptee, as well as a trustee and ward in accordance with the legislation of the Republic of Kazakhstan on marriage and family;

6) dumping – delivery of goods to the territory of the Republic of Kazakhstan sold at the price lower than its normal value;

7) interested persons – the National Chamber of Entrepreneurs of the Republic of Kazakhstan ;

domestic producer of such goods that is the object of verification, or union of domestic producers, the most participants of which produce such goods;

foreign exporter of goods and foreign producer of goods that is the object of verification ;

domestic importer of goods or union of domestic importers the most participants of which are importers of such goods ;

government of foreign state, authorized body of the country of origin of goods or export of such goods or the authorized body of the union of foreign states that includes the countries of origin of such goods or its their export;

consumer or union of the consumers of goods;

Government of the Republic of Kazakhstan and authorized body of the Republic of Kazakhstan ;

other persons, the rights and interests of which are affected by this verification and that are able to provide assistance in conduct of this verification at the opinion of the authorized body mentioned in Article 6 of this Law;

8) confidential information – information the divulgence of which represents significant preferences for competitors or that leads to significant adverse consequences for interested persons that provided information;

9) material damage – real damage and (or) lost income (loss of profit) of domestic producers from goods delivery at dumping prices;

10) normal value – price factually paid or subjected to payment in the process of ordinary commercial operations in operating and (or) exporting country, upon sale of goods being similar to that is the subject of antidumping investigation;

11) ordinary commercial operations – transactions of buy and sale of goods at the market price determined for similar goods upon consumption in exporting country;

12) domestic producers – Kazakhstan producers of similar goods the total volume of production of which is a main part of the production of similar goods in the territory

of the Republic of Kazakhstan;

13) similar goods – goods that are fully similar or comparable to other goods on their functional purpose, application, qualitative and technical characteristics and other basic properties;

14) supplier – foreign producer and (or) exporter of dumping goods;

15) regional producers – community of domestic producers of similar goods at the regional market meeting the following conditions:
producers sell all or main part of their goods within this market;
producers are the one that supply similar goods in this region;

16) regional market – market of separate administrative territorial entity of Kazakhstan;

17) threat of material damage – obvious unavailability of material damage confirmed by factual evidences for the purpose of exclusion of subjective thoughts on possibility of inflicting the damage;

18) authorized body – state body of the Republic of Kazakhstan carrying out the monitoring of commercial and production activity, conducting anti-dumping investigation on establishment of existence of the dumping and material damage or threat of its infliction and necessity of introduction of anti-dumping measures;

19) export price – the price factually paid or subjected to payment for the goods in respect of which the investigation is conducted.

Footnote. Article 1 as amended by the Laws of the Republic of Kazakhstan dated 09.01.2006 NO. 114 (shall be enforced from the date of its official publication); dated 04.07.2013 No. 130-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 2. Purposes of this Law

The purposes of this Law are protection of domestic producers from unfair competition caused by import of dumping goods and elimination of adverse consequences for domestic producers by introduction of anti-dumping measures.

Article 3. Scope of application of this Law

This Law regulates relations arising between the authorized body and interested persons, as well as between the interested persons themselves due to infliction of material damage or threat of inflicting material damage to domestic producers by import of goods to the Republic of Kazakhstan for the further sale at the price lower than their normal value and introduction of anti-dumping measures.

Article 4. Legislation of the Republic of Kazakhstan on anti-dumping measures

1. Legislation of the Republic of Kazakhstan on anti-dumping measures during import of goods consists of this Law and other regulatory legal acts.

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

Article 5. Organization of anti-dumping regulation

1. General management of anti-dumping regulation of commercial practice of suppliers of dumping goods shall be carried out by the authorized body.

2. Introduction, review and cancellation of anti-dumping measures shall be carried out on the basis of decisions of the Government of the Republic of Kazakhstan on presentation of the authorized body.

Footnote. Title of Article 5 as amended by the Law of the Republic of Kazakhstan dated 31 January 2006 No. 125.

Article 6. Authorized body

1. Authorized body shall act within the powers provided to it by this Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

2. Authorized body shall issue the regulatory legal acts within the competence on procedures of anti-dumping investigation, conduct investigation on the fact of dumping of goods, prepare materials for introduction to the Government of the Republic of Kazakhstan for the purpose of taking anti-dumping measures.

3. Upon carrying out of the functions, the authorized body shall interact with official bodies of other countries and international organizations.

Footnote. Article 6 as amended by the Law of the Republic of Kazakhstan dated 05.07.2011 No. 452-IV (shall be enforced from 13.10.2011).

Chapter 2. Anti-dumping investigation

Article 7. Subject of anti-dumping investigation

The subject of anti-dumping investigation is supplies of import goods at the prices lower than their normal values inflicting material damage or representing a threat of its

infliction to domestic producers of similar goods or curtailing the production of these goods.

Article 8. Application on inspection of the fact of existence of dumping and infliction or threat of inflicting material damage

1. Application on inspection of the fact of existence of dumping and infliction or threat of inflicting material damage shall be filed by domestic producers or their associations in written form to the authorized body.

2. The application shall contain the following data:

1) details of the applicant, applicants (hereinafter – applicant), data on production of goods by the applicant (volume and cost), as well as data on production of similar goods by domestic producers being known by the applicant;

2) description of goods, name of the country of export or origin, the list of known foreign exporters or producers, importers of these goods;

3) prices at which these goods are sold at the markets in the countries of origin or export, information of export prices, as well as prices of internal market for similar goods ;

4) dynamics of the volume of supplies of dumping goods, its impact on prices of the similar goods at internal market and consequences from the supplies of such goods.

2-1. For the purpose of taking decision on beginning of procedure for anti-dumping investigation and determination of sufficiency of evidences, the authorized body shall examine the credibility and accuracy of details represented in the application.

3. Application shall be considered as accepted if the authorized body recognizes the credibility of details represented in there provided by paragraph 2 of Article 8 notifying the applicant about this in written form. If the authorized body considers details insufficient, it shall inform the applicant about this within ten days term from the date of receipt of the application and provide a possibility to him (her) to amend or supplement the application.

In case if the applicant amends or supplements the application, the term of considering the application shall begin from the date of receipt of supplements or amendments .

4. Compulsory condition for beginning of the procedure of anti-dumping investigation upon the application of domestic producers is establishment by the authorized body of that there is more than fifty percent of the volume of production of goods of domestic producers on a share of those who expressed the opinion about this application. These opinions may be “for”, “against”, as well as not to express particular relation. By this, on a share of goods produced by domestic producers supporting the

application there is more than twenty five percent of all similar goods produced by
K a z a k h s t a n p r o d u c e r s .

Footnote Article 8 as amended by the Law of the Republic of Kazakhstan dated 9
January 2006 No. 114 (shall be enforced from the date of its official publication).

Article 9. Beginning of anti-dumping investigation at the initiative of the authorized body

In case if the authorized body holds details on existence of dumping and material damage or threat of its infliction by supplying dumping goods, it shall have the right to make decision on beginning of the anti-dumping investigation at its own initiative.

Article 10. Grounds for refusal in beginning of the procedure of anti-dumping investigation

Authorized body shall refuse in beginning of the procedure of anti-dumping investigation upon accepted application in cases if it is established that:

- 1) dumping difference is less than two percent from export price;
- 2) volume of supplies of dumping goods and material damage from them are not significant, in other words supply of goods from the country in respect of which the application is filed is less than three percent of supply of all the similar goods in Kazakhstan, except for the cases when there are more than seven percent of supplies of similar goods in Kazakhstan for combined supply of several countries in respect of which the application is filed;
- 3) conditions provided by paragraph 4 of Article 8 are not performed.

Footnote. Article 10 as amended by the Law of the Republic of Kazakhstan dated 9
January 2006 No. 114 (shall be enforced from the date of its official publication).

Article 11. Revocation of application

1. Application may be revoked by the applicant before beginning of anti-dumping investigation or in the course of it. In case if the application is revoked before beginning of the anti-dumping investigation, it shall be recognized unfiled.

2. If the application is revoked in the course of anti-dumping investigation, the authorized body shall have the right to continue anti-dumping investigation at its own initiative or terminate it without taking anti-dumping measures.

Article 12. Decision on beginning or refusal from procedure of anti-dumping investigation

1. Decision on beginning or on refusal from procedure of anti-dumping investigation shall be made by the authorized body within 30 days from the date of receipt of the application on the basis of examination of all the represented data, in compliance with conditions of Articles 8-10 of this Law.

1-1. Before making decision on beginning of procedure of anti-dumping investigation, the authorized body shall not divulge information on received application, with the exception of notification of the government of interested state.

2. After making decision on beginning of the procedure of anti-dumping investigation, the authorized body shall publish notification in official publications determined by the Law of the Republic of Kazakhstan “On regulatory legal acts” and direct notifications to interested persons.

3. Notification on beginning of the procedure of anti-dumping investigation shall contain the following information:

- 1) name of the authorized body conducting the anti-dumping investigation;
- 2) name of exporting country or countries and name of goods, the supply of which is the subject of anti-dumping investigation;
- 3) date of beginning of anti-dumping investigation;
- 4) ground for beginning of investigation;
- 5) brief statement of facts confirming the legality of the application;
- 6) terms within which the interested persons shall file their petitions to authorized body for receipt of possibility of familiarization with the case, expression of thoughts and holding the meetings of interested persons.

3-1. If the authorized body directs notification on beginning of anti-dumping investigation to separate person, it shall ensure availability of this notification to other interested persons.

4. In case of making decision on refusal in conducting anti-dumping investigation, the authorized body shall notify the applicant about this specifying the reasons and grounds for refusal within ten days term from the date of making decision.

5. Evidence received by the authorized body shall be presented to all the interested persons participated in anti-dumping investigation, except for confident information.

Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

Chapter 3. Procedure for establishment of existence of dumping

Article 13. Determination of normal value of goods

1. Normal value of goods shall be determined by the authorized body on the basis of price established in the process of ordinary commercial operations for similar goods intended for consumption in exporting and (or) producing country.

2. Sales between interdependent parties shall not be considered as performed within ordinary commercial operations and shall not be taken into account upon determination of normal value, with the exception of cases when the evidences that the fact of dependence did not impact on value of goods are represented.

3. When the goods are supplied in Kazakhstan not from the country of origin, but from the other country, the authorized body shall establish normal value on the basis of price paid or subjected to payment in this exporting country (hereinafter – exporting country).

Normal value shall be established at the price in the country of origin in the following cases:

- 1) goods are only carried (transferred) through the exporting country;
- 2) similar goods are not produced in exporting country;
- 3) there is no comparable prices for them in exporting countries.

4. In case of impossibility of determining the normal value of goods based on the prices of internal market of exporting and (or) producing country, by the reason of absence of sales of the similar goods at there or where such sales do not allow to conduct proper comparison in virtue of special market situation or small volume of sales at internal market of exporting and (or) producing country, the authorized body shall use as normal value of goods:

- 1) comparison price for similar goods exported to the third country upon condition that the sale of such goods is carried out in good supply;
- 2) calculating price including the costs of production with adding administrative, commercial and general costs (costs), as well as incomes determined in accordance with Article 14 of this Law.

5. Sales of similar goods may be considered by the authorized body as carried out in good supply for determination of normal value in the case if their volume intended for consumption at internal market of exporting and (or) producing country is no less than five percent of the volume of sales of such goods in Kazakhstan.

Authorized body may apply lower interest bearing of sales for proper comparison in existence of evidences of significance of the volumes of sales.

Article 14. Calculation of costs of production and income

1. Authorized body shall calculate the costs on the basis of accounting documents of a supplier of goods in respect of whom the anti-dumping investigation is conducted, upon condition that the documents conform to principles and standards of accounting

generally accepted in exporting and (or) producing country and reflect the costs linked with production and sale of such goods.

2. Authorized body shall consider all available evidences of proper sharing costs including goods imported by a supplier in the course of anti-dumping investigation, upon condition, that such sharing is usually used by the supplier, particularly for that to establish the relevant terms and regulations of amortization and other costs items.

3. Values of administrative, commercial and general costs, as well as income are based on factual data on production and sales of the similar goods in the process of ordinary commercial operations represented by a supplier of goods, in respect of whom the anti-dumping investigation is conducted. If such sums may not be determined on this basis, they shall be determined proceeding from:

1) factual sums paid and received by this supplier due to production and sale of goods of the same category at internal market of the country of origin;

2) weighted-average factual sums paid and received by other suppliers of goods in respect of whom the anti-dumping investigation is conducted due to production and sales of the similar goods at internal market of the country of origin;

3) any other substantiated method upon condition that the sum of profits established by this method does not exceed the income received by other suppliers upon selling the goods of the same category at internal market of the country of origin.

Article 15. Sales at the prices lower than level of costs

1. Authorized body shall not consider the sales of goods on which the anti-dumping investigation is conducted, at the internal market of exporting and (or) producing country or sales to the third country at the prices lower than the level of costs for a unit of production as the sale, carried out in the process of ordinary commercial operations by the reason of underpricing and shall not take into account these sales upon determination of the normal value in cases if the sales were carried out:

1) within the long period of time (up to one year, but no less than six months);

2) in substantial quantity;

3) at the prices not ensuring the coverage of all the costs within reasonable period of time.

2. If the prices that at the moment of selling were lower than costs, and in the period of investigation exceed weighted-average costs, the authorized body shall consider such prices as ensuring the coverage of all the costs within reasonable period of time.

3. Sales at the price lower than the level of costs for a unit of production shall be considered as carried out in substantial quantity, if the authorized body establishes that the weighted average selling price in transactions considered for determination of

normal value, lower than weighted-average costs for a unit of production or volume of sales at the prices lower than the costs for a unit of production is no less than twenty percent from the volume of sales on transactions considered for determination of normal value.

Article 16. Calculation of export price

1. In cases when the export price is absent or when export price is unreliable by the reason of existence of connection or agreement on compensation between an exporter and importer or third party, the export price shall be calculated on the basis of the price at which the supplied goods shall be resold for the first time to the buyer that is independent from the supplier or seller.

2. Authorized body upon conditions provided by paragraph I of this Article shall have the right not to take into account all the transactions between interdependent parties during calculation of export price.

Article 17. Determination of dumping difference

1. Authorized body shall conduct comparison between export price and normal value of goods for determination of dumping difference.

2. Existence of dumping difference shall be established on the basis of comparison of weighted-average normal value with weighted-average price of all the compared export transactions. Comparison shall be performed at one and the same stage of commercial operation, at the stage of unloading from the manufactory plant and in respect of sales carried out at the same time as far as possible. In every case, necessary amendments shall be made considering the differences that concern the comparability of prices including differences in conditions of supply, taxation, stages of commercial operation, quantity, physical characteristics, as well as any other differences, in respect of which the interested persons shall also represent the evidences of their effect to comparability of prices.

3. Normal value established on the weighted-average basis may be compared with the prices of particular export transactions, if the authorized body discovers that the export prices essentially differ between different buyers, as well as through the regions or periods of time. In these circumstances, the authorized body shall give explanation to interested persons why such differences may not be taken into account during conduct of comparison of the weighted-average values or prices of particular transactions.

4. In cases when the export price is calculated on the basis of the price at which the supplied goods are resold for the first time to independent buyer in accordance with Article 16 of this Law, it shall be required to make amendments for the expenses

including duties and taxes paid in the period between supply and resale, as well as for the value of income received from supply and sale of goods. If in such cases the comparison of prices is concerned, the authorized body shall establish normal value at the stage of commercial operation being equivalent to the stage relating to which the export price is calculated, or shall make necessary amendments permitted by this Article .

5. Authorized body shall have the right to require information from interested persons being required for comparison. In each particular case, the authorized body shall establish necessary procedure for representing evidences of each interested person .

Article 18. Conversion of currency during determination of dumping

1. If comparison of export price and normal value requires conversion from one currency into another, such conversion shall be carried out by the authorized body with use of official exchange rate established by the National Bank of the Republic of Kazakhstan on the date of sale. Date of sale is the date of contract, buying order, confirmation of order or account depending on which document determines the conditions of sale .

2. If the export supply is linked indirectly with sale of foreign currency by a supplier received for payment of this supply at currency forward markets, the authorized body shall take into account the exchange rate used upon sale of the above mentioned foreign currency by the supplier for the relevant term.

3. Authorized body shall not take into account the short-term movement of exchange rates. Suppliers shall represent no less than two months for correction of own export prices during the period of anti-dumping investigation for correction of own export prices in recognition with tendency of changing exchange rates in the investigated period .

Footnote. Article 18 as amended by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

Chapter 4. Establishment of existence of material damage or threat of its infliction

Article 19. Determination of material damage or threat of its infliction

1. Determination of material damage or threat of its infliction is based on evidences and includes examination of the volume of supply of dumping goods and its effect on the price of similar goods at internal market and consequences of such supplies for domestic producers of these goods.

2. If supplies of goods from more than one country are the subject of anti-dumping investigations conducted at the same time, the authorized body may assess the overall effect of such supplies only if it is determined, than the dumping difference established in respect of supplies from each country is two and more percent from export price, and volume of supplies from each country is not insignificant, as it is determined in Article 10 of this Law, and aggregate assessment of effect of supplies is economically substantiated as upon competition between supplied goods, so between supplied goods and the similar goods of domestic producer.

Article 20. Examination of volume and price of supplies of dumping goods

1. Upon examination of the volume of supplies of dumping goods, the authorized body shall determine if there is significant increase of supplies of dumping goods in absolute terms or in respect of production or consumption in Kazakhstan.

2. Upon examination of effect of supplies of dumping goods on the prices, the authorized body shall determine the level of underpricing upon supplies of such goods in comparison with the price of the same Kazakhstan goods or to what extent the supply of dumping goods have an effect on lowering of prices or impede their increase which otherwise would occur.

Article 21. Assessment of effect of supplies of dumping goods on domestic producers

Examination of effect of supplies of dumping goods on domestic producers shall include the assessment of authorized body of all the economic factors and indicators related with the case, having effect on condition of such production including: factual and potential decrease of sales, profits, release of production, market shares, productivity, incomes from investment, capacity utilization; factors having an effect on prices of internal market, value of dumping difference; factual and potential effect on movement of money flows, trade stocks, employment, salary, rates of growth, possibility of attracting investments.

Article 22. Establishment of existence of material damage or threat of its infliction

1. The fact of infliction or threat to inflict material damage by domestic producers due to supply of dumping goods shall be determined by the authorized body.

For establishment of cause and effect relationship between supplies of dumping goods and material damage or threat of its infliction by domestic producers, the authorized body shall use factual data represented by the interested persons.

2. Authorized body shall examine effect of other known factors (except for supplies of dumping goods) that acted in considered period and inflicted material damage to domestic producers. The factors shall include the volume and prices of supplied goods not sold at dumping prices, diminution in demand or change in a structure of consumption, restrictive trade practice and competition between foreign and domestic producers, technological achievements, as well as results of export and productivity of domestic productions. The detected material damage shall not be considered as arising in a result of supply of dumping goods.

3. Authorized body shall represent possibility to consumers of goods that are the subjects of anti-dumping investigation, and to representatives of organizations of consumers in the cases when the goods are sold in a retail trade, to provide information for the purpose of investigation concerning the dumping, material damage or its threat and cause and effect relationship.

4. Threat of material damage to domestic producers from supplies of dumping goods shall be substantiated by the authorized body on the basis of analysis of the following factors:

1) increasing rates of growth of supplies of dumping goods into internal market pointing to the probability of the following increase of supplies;

2) existence of sufficient export possibilities or unavoidable significant increase of export possibilities of a supplier pointing to the probability of significant following increase of supplies of dumping goods in Kazakhstan. By this, the possibilities of other export markets to consume suggested volume of additional supplies shall be considered ;

3) supplies at the prices that may have an effect on significant lowering or suppression of prices of internal market and lead to growth of demand for additional supplies ;

4) stocks of goods in the country of export and (or) production in respect of which the antidumping investigation is conducted.

Article 23. Material damage to regional producers

In case of concentration of supplies of dumping goods at the separate regional market of Kazakhstan when these supplies bring to infliction of material damage to

regional producers, the authorized body shall have the right to conduct anti-dumping investigation in accordance with provisions of the Law relating to this region.

Chapter 5. Procedure for conduct of anti-dumping investigation

Article 24. Terms of anti-dumping investigation

Anti-dumping investigation on the facts of existence of dumping and material damage or threat of its infliction shall be completed within one year from the date of beginning of its procedure.

In exclusive cases, this term may be prolonged by the authorized body but no more than six months.

Footnote. Article 24 as amended by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

Article 25. Information on anti-dumping investigation

1. After beginning of anti-dumping investigation, the authorized body shall send requests to interested persons within three days.

One month from the date of receipt of the request for preparation of respond for requests in the state or Russian or another language by agreement shall be provided to interested persons. This term may be prolonged by the authorized body but no more than one month. Request shall be considered as received after seven days after that it was sent by mail or transferred to a representative of interested persons.

In the course of anti-dumping investigation, the authorized body may request additional information from interested persons with establishment of the term to which the respond shall be given.

2. Each interested persons shall have the right to provide any other information in written form which it shall consider necessary in the state or Russian or another language by agreement.

3. Authorized body shall have the right to require customs, tax, statistics information during conduct of anti-dumping investigation from the authorized bodies of the Republic of Kazakhstan.

Footnote. Article 25 as amended by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

Article 26. Confidentiality of information on anti-dumping investigation

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

2. Party providing confidential information shall represent the explanatory note about this information that is not confidential.

Explanatory note shall be sufficiently detailed for understanding of essence of information or shall explain the reasons why the provision of more detailed non-confidential information is impossible.

3. If the authorized body establishes that the requirement on confidentiality is not substantiated or if the person from which the information came from does not permit its divulgence, the authorized body may not take into account such information, with the exception of cases when it is proved that the information is credible.

4. Person liable for divulgence of confidential information shall bear responsibility in accordance with the Laws of the Republic of Kazakhstan.

Footnote. Article 26 as amended by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

Article 27. Inspection of information provided in accordance with procedures for anti-dumping investigation

1. For the purpose of inspection of information or receipt of additional data with the consent of the relevant exporters and (or) producers and in the absence of objections of official bodies of their countries, the authorized body may direct specialists in the territory of these countries.

2. Authorized body shall inspect information on existence of dumping for the period from six months up to one year directly preceding the date of beginning of anti-dumping investigation, and may inspect information on existence of material damage or a threat of its infliction up to three years.

3. If any interested person does not represent necessary details within term established by the authorized body or otherwise obstruct anti-dumping investigation, the authorized body shall have the right to issue conclusion on the basis of existed data.

Article 28. Procedure for conducting of case

1. Procedure for conducting of case on anti-dumping investigation shall be established by the authorized body. The case shall include all necessary documents concerning the particular anti-dumping investigation, procedure and terms of storage of

which are determined in the legally established manner.

2. Interested persons shall have the right to familiarize with information on anti-dumping investigation conducted by the authorized body that is not confidential.

Article 29. Meeting of interested persons

1. Within the anti-dumping investigation, all the interested persons shall have the right to protect their interests. For this purpose, the authorized body upon application of interested persons shall provide possibility to parties having cross interests for meeting for discussing materials of investigation, provision of additional information. In existence of the grounds, the interested persons shall have the right to provide additional information verbally.

Absence of any interested persons at such meetings shall not entail damage to their interests upon conducting of investigation.

2. Verbal information shall be taken into account by the authorized body after its written confirmation within ten days after the meeting.

3. Authorized body shall provide possibility to all the interested persons in time to familiarize with all non-confident information used by the authorized body in anti-dumping investigation for preparation of argumentation on their cases.

Footnote. Article 29 is in the wording - by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

Article 30. Introduction of temporary anti-dumping measures

1. Authorized body after issuance of preliminary determination on existence of dumping and material damage or a threat of its infliction shall direct notification on intention of applying the temporary anti-dumping measures to all the interested persons and official bodies of their countries. Within twenty days after notifying, the interested persons involved in investigation shall have the right to represent written notes in respect of the grounds of imposing the anti-dumping temporary measures that the authorized body shall take into account or deny during the preparation of the conclusion on introduction of temporary anti-dumping measures.

1-1. Considering requirement of this Law to confident information, the notification on introduction of temporary anti-dumping measures shall contain:
names of suppliers or the relevant countries-suppliers if it is practically impossible;
description of goods sufficient for customs purposes;
established dumping difference and substantiation of methodology used for establishment and comparison of export price and normal value according to chapter 3 of this Law ;

opinions of the authorized body related to establishment of existence of damage in accordance with chapter 4 of this Law; main reasons for taking temporary anti-dumping measures.

2. On the basis of preliminary determination on existence of dumping and infliction of material damage to them or a threat of its infliction issued by the authorized body, the Government of the Republic of Kazakhstan shall make a decision on introduction of temporary anti-dumping measures:

1) that shall contain the name of suppliers or countries from where the goods are supplied; description of goods (sufficient for customs purposes); rate of temporary anti-dumping duty and terms of its application;

2) that shall be published in official publications. Publications shall include main reasons of taking temporary measures; established value of dumping and applied method of calculation; criteria of assessment of material damage. Publication shall not contain confidential information.

3. Temporary antidumping measures may be applied to import of dumping goods no earlier than after sixty days from the date of beginning of the investigation.

If the value of temporary anti-dumping duty is equal to amount of preliminary calculated dumping difference, the validity term of temporary anti-dumping duty shall not exceed four months with the exception of the case when such term is prolonged up to six months under decision of the authorized body on the basis of applications of exporters the share of which in the volume of sales of dumping goods that are the object of investigation is significant part.

If the rate of temporary anti-dumping duty is less than preliminary calculated dumping difference, the validity term of temporary anti-dumping duty shall not exceed six months, with the exception of the case when this term is prolonged up to nine months under decision of the authorized body on the basis of applications of exporters, the share of which in the volume of supplies of dumping goods that are the object of investigation is significant part.

4. Temporary anti-dumping measures shall be applied by bodies of state revenues of the Republic of Kazakhstan to import of dumping goods released or being subject to release in free circulation to its territory after entering in force of decision of the Government of the Republic of Kazakhstan on their application in the form of temporary anti-dumping duty by entering of owing money sums in deposit and (or) in the form of guarantee of the bank of the Republic of Kazakhstan. By this, the supplier himself (herself) shall choose the form of application of temporary anti-dumping measures. Temporary anti-dumping duties shall be charged in the manner determined by the customs legislation of the Republic of Kazakhstan.

Footnote. Article 30 as amended by the Laws of the Republic of Kazakhstan dated 09.01.2006 No. 114 (shall be enforced from the date of its official publication); dated

30.06.2010 No. 297-IV (shall be enforced from 01.07.2010); dated 07.11.2014 No. 248 -V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Chapter 6. Completion of anti-dumping investigation

Article 31. Conclusion on entering of anti-dumping measures or termination of anti-dumping investigation without their introduction

1. Anti-dumping investigation conducted by the authorized body on determination of existence of dumping, material damage and cause and effect relationship between them shall be completed by preparation of the conclusion directed to the Government of the Republic of Kazakhstan:

- 1) on termination of anti-dumping investigation without taking measures;
- 2) on incurrance of obligation on prices by exporter and (or) producer;
- 3) on introduction of antidumping duties.

2. Antidumping investigation shall be terminated by the authorized body without introduction of anti-dumping measures, if:

- 1) there is no sufficient evidence of dumping or material damage or a threat of its infliction;
- 2) dumping difference is less than two percent from export price or volume of dumping import (factual or potential) or extent of material damage or a threat of its infliction is insignificant in accordance with provisions of this Law.

3. Notification on termination of investigation without introduction of anti-dumping measures shall be published in official publications.

4. Notification on introduction of antidumping measures shall be published in official publications and in recognition of requirements of this Law to confidential information shall contain all the information related to investigation, concerning the facts and legal regulations for introduction of anti-dumping duties, as well as the reasons of acceptance or rejection of written evidences and requirements submitted to suppliers and interested persons in the course of anti-dumping investigation.

Footnote. Article 31 as amended by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

Article 32. Introduction and determination of the amount of antidumping duties

1. Decision on introduction of antidumping duties and their rate shall be taken by the Government of the Republic of Kazakhstan at the suggestion of the authorized body and shall be enforced from the date of its publication in official publications with the exception of cases provided in paragraph 2 of Article 34 of this Law.

The supplier or suppliers of dumping goods shall be identified in the decision.

In case if the dumping goods are imported by several suppliers from one country and it is impossible to identify all the suppliers, only the country shall be identified.

If the dumping goods are imported by several suppliers from more than one country, all the involved suppliers or if it is practically impossible, each from involved countries-suppliers shall be identified.

2. On the basis of decision of the Government of the Republic of Kazakhstan on introduction of anti-dumping duty, the bodies of government revenue shall charge it from the entire imported goods, in respect of which the anti-dumping investigation was conducted, with the exception of goods of the suppliers that incurred the obligations on p r i c e s .

3. Anti-dumping duties shall be established in the volume sufficient for elimination of the consequences of dumping. The value of antidumping duty shall not exceed the d u m p i n g d i f f e r e n c e .

4. In case when the sums paid due to introduction of temporary measures exceed the dumping difference, the supplier shall have the right to return of exceeding sum in the manner established by the legislation.

5. In case if the anti-dumping duty is introduced in amount exceeding the rate of temporary anti-dumping duty, the difference from the supplier shall not be charged.

Footnote. Article 32 as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Article 33. Anti-dumping investigation in respect of third parties

1. If after the completion of anti-dumping investigation, the third party not linked with other suppliers of the goods levied by anti-dumping duties begins the supply of similar goods, the anti-dumping investigation in respect of him (her) shall begin within one month and completed no later than twelve months from the date of receipt of the a p p l i c a t i o n o n i t .

2. In the course of anti-dumping investigation, the anti-dumping duties in respect of this third party shall not be charged, however the temporary anti-dumping measures may be introduced in the manner established by this Law.

Article 34. Procedure for application of anti-dumping duties

1. Goods released in free circulation in the territory of the Republic of Kazakhstan up to the date of beginning of the anti-dumping investigation may not be levied by anti-dumping duties.

2. Anti-dumping duties shall be applied from the date of introduction of temporary measures in cases of their introduction.

Article 35. Validity term of anti-dumping duty

1. Validity term of anti-dumping duty shall not exceed the term required for elimination of material damage to domestic producers of Kazakhstan or for prevention of a threat of its infliction and adaptation of domestic producers to the competitive conditions. The mentioned term shall not exceed five years from the date of its introduction or the last review.

2. Procedure for preparation of review of anti-dumping duty shall be carried out by the authorized body at the own initiative or on the basis of application of interested persons filed no later than the forty five days until termination of the validity term of anti-dumping duty.

3. In case if it is established that the force of anti-dumping duty does not entail to elimination of material damage or a threat of its infliction to domestic producers, the authorized body shall petition before the Government of the Republic of Kazakhstan on prolongation of the validity term of the previously introduced anti-dumping duty.

Chapter 7. Obligations on prices

Article 36. Conditions of incurring the obligations on prices

1. Anti-dumping investigation may be suspended or terminated without imposition of temporary measures or anti-dumping duties after incurrence of voluntary obligation by the person involved in the anti-dumping investigation on review of price or termination of the import of goods in Kazakhstan at dumping prices in respect of which the anti-dumping investigation is conducted that would eliminate the consequences from dumping.

2. Authorized body shall not have the right to require that increase of prices on such obligations would be more than established dumping difference. Increase of price may not be less than dumping difference, if the authorized body establishes that such increase would be sufficient for elimination of consequences from dumping for domestic producers.

3. Obligations on prices may be suggested by the authorized body, but the supplier shall not be forced to take on him (her) such obligations.

4. The obligation on prices may be incurred by the authorized body only after issuance of the preliminary affirmative conclusion in accordance with Article 30 if this Law in respect of existence of dumping and material damage or a threat of its infliction

5. The obligation on prices may not be incurred, if the authorized body considers their incurrence practically unrealizable in virtue of large number of suppliers or by the other reasons including general political reasons on which the authorized body shall inform the supplier.

Article 37. Force of obligation on prices

1. Authorized body shall have the right to terminate investigation in case of fair performance of incurred obligations on prices by the supplier.

2. Authorized body shall continue anti-dumping investigation after incurrence of obligations on the prices for determination of existence of dumping and material damage or its threat in cases when the supplier that incurred the obligation on prices or at his (her) own initiative insists on this.

3. Obligation on prices shall be annulled automatically if the decision on absence of dumping or material damage or its threat is made, with the exception of cases when the absence of dumping or material damage is a consequence of incurred obligation on p r i c e s .

4. Obligation on prices shall remain in force within the time and in amount required for countering dumping inflicting the material damage.

5. After incurrence of obligation on prices, the authorized body shall direct the notification on this to all the interested persons in compliance with conditions of Article 26 of this Law.

Article 38. Control of fulfillment of obligations on prices

1. Authorized body shall have the right to require representation of details on performance of incurred obligation on prices from the supplier whose obligation on prices was incurred, as well as conduct inspection of their credibility.

2. In case of violation of incurred obligations on the prices by the supplier, the Government of the Republic of Kazakhstan at the suggestion of the authorized body shall have the right to impose temporary anti-dumping measures immediately, without preliminary notification.

Chapter 8. Final provisions

Article 39. Conditions and procedure for cancellation of temporary anti-dumping measures

1. If the amount of temporary anti-dumping measures being in force is less than imposed anti-dumping duty, the difference shall not be subject to payment, if more – then at the will of the supplier, the difference shall be compensated to him (her) in legally established manner.

2. Upon establishment of a threat of material damage, the anti-dumping measure may be applied only from the date of issuance of conclusion on existence of a threat of material damage and temporary measures being in force shall be cancelled, and any money deposit contributed during the period of application of temporary measures shall be returned and any pecuniary liability of the supplier shall be annulled.

3. If in the course of anti-dumping investigation the absence of dumping and material damage or a threat of its infliction is established, all the temporary measures shall be cancelled within ten days from the date of making decision, and the charged sums shall be returned within one month from the date of making decision in legally established manner.

Article 40. Cancellation or change of anti-dumping measures

1. At any time at own initiative or at the initiative of interested persons in existence of details that the goods earlier recognized as dumping are supplied at the price being close or equal to its normal value upon which the dumping or material damage is eliminated or reduced, the authorized body may consider the question of advisability of continuation of applying the measures or possibility of their change.

2. In case if it is established that the applied anti-dumping measures are inadvisable to be preserved, the authorized body shall introduce the draft regulation on their cancellation or change of their extent to the Government of the Republic of Kazakhstan

Article 41. Procedure for appealing decisions

Interested persons shall have the right to appeal decisions and actions of the authorized body taken during the period of anti-dumping investigation in a judicial proceeding established by the legislation of the Republic of Kazakhstan.

Article 42. Customs declaring and recording of dumping goods

Footnote. Title of Article as amended by the Law of the Republic of Kazakhstan dated 30.06.2010 No. 297-IV (shall be enforced from 01.07.2010).

1. Conduct of anti-dumping investigation is not the ground for preclusions in the customs declaring of dumping goods.

2. After beginning of the investigation on import of dumping goods upon the application of the authorized body, the bodies of government revenues shall conduct recording of the import of dumping goods in order to apply the anti-dumping measures to this import in the following.

3. Bodies of government revenues shall inform the authorized body about details on import of dumping goods on a monthly basis, in respect of which the investigation is conducted.

Footnote. Article 42 as amended by the Laws of the Republic of Kazakhstan dated 30.06.2010 No. 297-IV (shall be enforced from 01.07.2010); dated 07.11.2014 No. 248 -V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

Article 43. Responsibility for breach of the legislation on anti-dumping measures

Responsibility of the authorized body and its civil servants for the breach of the legislation on anti-dumping measures shall be applied in accordance with the Laws of the Republic of Kazakhstan.

Footnote. Article 43 as amended by the Law of the Republic of Kazakhstan dated 9 January 2006 No. 114 (shall be enforced from the date of its official publication).

*The President
of the Republic of Kazakhstan*