

The Law of Ukraine

On Protection of the National Producer against Dumped Imports

As amended and added by the Laws of Ukraine
N 1595-III of March 23, 2000,
N 860-IV of May 22, 2003,
N 3027-IV of November 1, 2005

(On the date of Ukraine's accession to the World Trade Organization
this Law will be amended according to clause 16 of Chapter I of the Law of Ukraine
N 3027-IV of November 1, 2005)

(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 May 22, 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-IV of
November 1, 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 November 1, 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 March 23, 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 November 1, 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 March 23, 2000)

2. Part two of Article 5 is expelled

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

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

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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

10. 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 March 23, 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 November 1, 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 per cent 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 per cent 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 per cent 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 November 1, 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" in the wording which is effective as of the date of importation of goods into the importing country. 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.

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 November 1, 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 November 1, 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 lower than prices for the like products;
- 2) whether such dumping imports resulted in lower prices for the like products;
- 3) whether such dumping imports hampered a possible increase in prices for the like products that would otherwise have occurred.

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 November 1, 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 investigation of consequences of the impact of dumped imports, subject to an investigation, upon the national producer shall include the evaluation of all economic factors and indicators, related to this investigation and affecting the state of the producer, particularly through:

- 1) incomplete refund of the actual amount of a margin of dumping to a national producer and incomplete liquidation of the consequences of:

the previous dumping or funding;

actual and potential decline in sales and production, as well as in the size of profits or profits on the invested capital;

actual and potential contraction of the market or its part;

actual and potential decline in efficiency of production and utilization of capacity;

2) factors affecting the prices in the importing country;

3) actual and potential negative consequences, affecting the state of liquidity, inventories of goods, employment of the population, salary levels, economic development and conditions for attraction of investments.

4) other factors.

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

(paragraph ten of part five of Article 10 is in the wording of the Law of Ukraine N 3027-IV of November 1, 2005)

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 November 1, 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 November 1, 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 third person;

3) together they directly or indirectly control a third producer, which affects the activity (inactivity) of such producers to that extent, 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 per cent 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 per cent 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 per cent (but less than 50 per cent) 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 per cent 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 antidumping 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 per cent 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 per cent of imports of the product under investigation in the importing country, unless exporting countries which individually account for less than 3 per cent of dumping imports of the product under investigation in the importing country collectively account for more than 7 per cent 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 November 1, 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 November 1, 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. Together with the notification on initiation of an anti-dumping investigation the Ministry shall send to the known exporters, importers, other parties of an anti-dumping investigation, which the Ministry considers necessary to be involved into the investigation or to the competent bodies of exporting countries the questionnaires with the purpose of obtaining information and evidence which shall be used in the process of an anti-dumping investigation.

Answers to the specified questionnaire shall be forwarded to the Ministry within 30 days from the day of its reception. The questionnaire shall be deemed received after four days from the date of its sending to the addressee or forwarding to the diplomatic representative of the exporting country.

The term for providing answers to the questionnaire may be extended by the Ministry with consideration of terms, established for performing of the investigation and under condition of providing compelling arguments for such an extension by an interested party.

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 November 1, 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 November 1, 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 per cent, 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 clauses 1-9 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 November 1, 2005)

The provisional anti-dumping duty shall be charged in a relevant size and in each individual case on a nondiscriminatory 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 and customs fees charged while importing certain types of products into the customs territory of the importing country.

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 anti-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 November 1, 2005)

1. Part one of Article 16 is deleted

(according to the Law of Ukraine
N 3027-IV of November 1, 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 per cent 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 per cent of imports of the product under investigation in the importing country, unless exporting countries which individually account for less than 3 per cent of dumping imports of the product under investigation in the importing country collectively account for more than 7 per cent 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 per cent 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 November 1, 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 November 1, 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, customs fee, etc. which are generally collected during importation of the goods in the importing country.

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 of 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 November 1, 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 of sufficient damage is present or there 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 November 1, 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 November 1, 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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 per cent 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.

8. 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 per cent 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 per cent 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, customs fee and others, 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.

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 November 1, 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 November 1, 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 November 1, 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 November 1, 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 November 1, 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 November 1, 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 t 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 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 November 1, 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 antidumping 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 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

December 22, 1998

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