

# **Law of the Republic of Kazakhstan as of December 28, 1998, N 337-1 ZRK**

## **On Safeguard Measures to Protect Domestic Market**

This Law shall govern relationships that emerge in the process of applying safeguard measures aimed at the protection of the domestic producers of goods and economic security of the Republic of Kazakhstan, for the purpose of adaptation of the national economy to competition with imported goods.

### **Article 1. Main Concepts**

The following main terms are used in this Law:

1) Temporary safeguards measures mean preliminary protective measures applied in the form of protective duties by customs authorities under the Resolution of the Government of the Republic of Kazakhstan;

2) Involved parties mean domestic producers of similar or directly competing goods under investigation or association of domestic producers, the majority of members of which produce such goods; foreign exporters of the goods and foreign producers of the goods under investigation; domestic importer of goods or association of domestic importers, the majority of members of which are the importers of such goods; the government of a foreign state, the authorized body of the country of origin of the goods or export of such goods, or authorized body of the commonwealth of foreign states that includes countries of origin or export of such goods; consumers or association of consumers of the goods; the executive authorities of the Republic of Kazakhstan; other entities and individuals, the rights and interests of which are affected by such investigation and which, in the opinion of the authorized body mentioned in article 6 hereof, are able to assist in this investigation;

Safeguard measures mean a number of administrative and economic leverages applied under the Resolution of the Government of the Republic of Kazakhstan in the form of protective duties and/or quotas to supply goods entered to the customs territory of the Republic of Kazakhstan for free circulation in the domestic market in such amounts (absolute or compared to domestic production) and in such conditions, that materially damage or are likely to materially damage domestic producers of similar or directly competing goods;

Protective duties means duties that are charged by the customs authorities in addition to customs duty rate in cases where any goods are entered to the customs territory of the Republic of Kazakhstan in such amounts and on such terms, that materially damage or are likely to materially damage domestic producers of similar or directly competing goods;

Import quota means a limit on importation of goods to the customs territory of the Republic of Kazakhstan as to the quantity and/or price thereof;

Import of goods within previous period means the average imported amount of goods for three preceding years, with regard to which statistical data is available;

Confidential information means information, disclosure whereof gives considerable advantages for competitors or has material adverse impact on the involved party that provided the information;

Domestic industry (producers) means Kazakhstani producers of similar or directly competing goods, aggregate amount of which equals majority (over fifty percent) production of such goods in the Republic of Kazakhstan;

Similar or directly competing goods mean the goods that classify under the same code of the "Goods Nomenclature for Foreign Economic Activities of the Commonwealth of Independent States" and that are totally identical to the other goods or comparable thereto as to its functional purpose, use, qualitative and technical parameters and other main features, so that the buyer replaces or is prepared to replace such goods with other goods in the process of consumption;

Investigation means the procedure for examination of documents and other evidences relating to the import of any goods to the customs territory of the Republic of Kazakhstan in such amounts and on such terms that materially injure or are likely to materially injure domestic producers of similar or directly competing goods;

Material injury means a considerable deterioration of the situation in the domestic production of similar or directly competing goods in the Republic of Kazakhstan due to increased supply thereof to the customs territory of the Republic of Kazakhstan, which, in particular, manifests in lower production of such goods, reduced sales of domestic goods in the domestic market of Kazakhstan, reduced profitability of production of such goods, negative impact on the employment, wage levels and other indicators;

Threat of material injury means an inevitable considerable deterioration of the domestic production status in the future;

Authorized body means a government authority of the Republic of Kazakhstan that holds investigations to determine injury and the necessity of applying safeguard measures.

## **Article 2. Legislation of the Republic of Kazakhstan concerning measures to protect domestic market under importation of goods**

Legislation of the Republic of Kazakhstan concerning measures to protect domestic market under importation of goods shall consist of this Law and other legal acts of general application.

In the event that an international treaty or agreement ratified by the Republic of Kazakhstan prescribes rules other than those set out herein, the rules of the international treaty or agreement shall apply.

## **Article 3. Objectives of this Law**

The purpose of this Law shall be to protect interests of domestic producers of goods and rectify material injury or a threat thereof under increased importation of goods to the customs territory of the Republic of Kazakhstan.

Safeguard measures shall apply only if there is a material injury or a threat thereof exists to domestic producers due to increased supplies of goods to the customs territory of the Republic of Kazakhstan.

Safeguards measures shall apply provided that an investigation has been conducted in compliance with the rules and procedures set out herein.

Safeguards measures shall apply to imported goods on a non-discriminatory basis irrespective of the country of origin of goods.

## **Article 4. Scope of application of this Law**

This Law shall govern relationships that arise between the authorized body and all involved parties, as well as between the involved parties, due to increased supplies to the customs territory of the Republic of Kazakhstan of any goods in such amounts (absolute or compared

to domestic production) and on such terms as to cause a materially injury or to threaten to cause a material injury to domestic producers of similar or directly competing goods.

## **Article 5. Governmental regulatory bodies**

The governmental regulation and monitoring of suppliers' trading practices with regard to facts of material injury shall be performed by the authorized body.

Safeguard measures shall be introduced and cancelled by the Resolution of the Government of the Republic of Kazakhstan upon petition of the authorized body.

## **Article 6. Authorized body**

The authorized body shall act within the authority vested with it by this Law and other legislative acts and regulations of the Republic of Kazakhstan.

Where envisaged by this Law, other legislative acts and regulations of the Republic of Kazakhstan, the authorized body within its authority shall issue regulations concerning investigative procedures, conduct review of applications from domestic producers, prepare materials to be submitted to the Government of the Republic of Kazakhstan for application of safeguard measures.

The governmental authorities and commercial organizations shall assist in investigation, provided sample goods and required information including confidential at the request of the authorized body.

## **Article 7. Decision to initiate investigation**

The decision to initiate investigation shall be made by the authorized body upon instruction from the Government of the Republic of Kazakhstan based on the authorized body's findings with regard to the application of the domestic producer or producers' association.

The application for the investigation preceding the application of safeguards measures may not be accepted for consideration, if domestic producers of the goods that second said the application produce less than fifty percent of the total production of similar or directly competing goods in the Republic of Kazakhstan.

After it made a decision to initiate investigation, the authorized body must advise the concerned foreign state (commonwealth of foreign states) on the intention to initiate investigation aimed at a possible application of safeguard measures.

## **Article 8. Lodgment of application**

1.The application for investigation shall be lodged in writing to the authorized body; it must contain the following information:

- 1)the details of applicant, data on the price and produced quantity of similar or directly competing goods for three preceding years, with respect whereto statistical data is available;
- 2)a description of imported goods under investigation, name of the country or countries of origin thereof, a list of known suppliers of these goods;
- 3)data reflecting all relevant factors of objective nature: change in the level of sales, production, productivity, workload of the facilities, profit and loss amounts, staff redundancies; information about changes in prices of similar or directly competing goods in the domestic market of the Republic of Kazakhstan.

- 2.The applicant may revoke his application prior to the beginning of an investigation. In such case, the application shall be deemed to have not been filed.
- 3.The applicant shall be responsible for the accuracy of information provided on the application.

## **Article 9. Review of application**

The authorized body must consider the accuracy and sufficiency of data in the application and prepare a decision either to conduct or to reject to begin an investigation within thirty calendar days following the lodgment of the application.

Should the authorized body regard the information insufficient, it must advise the applicant thereon within thirty calendar days and give the applicant an opportunity to make additions. If the applicant makes additions to the application, the application review period shall count as of the date when the additions are received.

The authorized body shall make a decision to reject to begin an investigation, in the event that there are no sufficient evidences of a caused material injury or a threat thereof to domestic producers of similar or directly competing goods.

After the decision is made to reject to begin an investigation, the authorized body must advise the applicant thereon indicating the reasons and substantiation of rejection.

## **Article 10. Investigation Commencement**

1.The authorized body shall notify the involved parties about upcoming investigation within thirty calendar days following the moment when the decision to begin an investigation is made.

2.The notice must contain the following:

1)the name of the country (countries) exporting goods and the name of the goods under investigation;

2)the commencement date;

3)the rationale of the investigation;

4)a brief description of the facts proving legitimacy of the application;

5)the address to which the involved parties should send their materials;

6)the timeline according to which the involved parties may provide their materials.

2.The involved parties must respond in writing in the official language or any other language, subject to their agreement, within thirty calendar days.

3.The investigation aimed at a possible application of the safeguards measures must not preclude the customs clearance and release of the goods under investigation into the customs territory of the Republic of Kazakhstan.

4.From the date of decision to begin an investigation until the completion thereof, the Government of the Republic of Kazakhstan shall license import of the goods under investigation into the customs territory of the Republic of Kazakhstan without any quantitative limitations.

5.The investigation must not be held in respect of goods originating from the least developed countries qualified as such under the Resolution of the United Nations Organization.

6.If one Kazakhstani producer that seconded the application for safeguard measures exceeds thirty five percent of Kazakhstani production of similar or directly competing goods, or if the total quantity of the goods under investigation is less than twenty five percent of the total distribution of similar or directly competing goods in the domestic market of the Republic of Kazakhstan, there must be a determination of the authorized anti-monopoly executive body

regarding possible consequences of the said measures on the competition in domestic market of the Republic of Kazakhstan.

### **Article 11. Investigation Timeline**

The investigation preceding the application of safeguard measures must be completed within nine months.

### **Article 12. Information Request**

After the commencement of an investigation, where necessary, the authorized body may send information requests to the involved parties with the fixed period for response.

Each involved party shall have a right to provide any other evidences that it deems necessary within the period fixed by the authorized body in the notice.

### **Article 13. Confidential information**

Confidential information provided to the authorized body in the course of investigation must not be disclosed without a written consent of the involved parties.

The involved parties that provide confidential information must provide written clarifications thereon.

Such clarifications must be detailed enough to understand the nature of the information or explain the reasons for which submission of more detailed disclosed information is impossible.

The authorized body shall be liable for disclosure of confidential information as prescribed by the legislation of the Republic of Kazakhstan.

### **Article 14. Investigative Proceedings**

In each investigation, the authorized body shall duly keep the case-file. The case-file must contain all documents relating to the proceeding, the procedure for and period of storage of which are defined according to the legislation.

The case materials that are not confidential shall be provided to the involved parties for review in the course of investigation and re-consideration of the case at their request.

The authorized body shall publish a report on each investigation in the official press media. Such a report must include a detailed analysis of the case with the rationale of the adopted Resolution of the Government of the Republic of Kazakhstan.

### **Article 15. Hearings**

The involved parties shall have a right to appeal to the authorized body for the conduct of hearings to familiarize themselves with the case materials and arguments of the other party.

Such hearings shall be chaired by an official of the authorized body and documented in the protocol.

### **Article 16. Determination of Material Injury**

1.A material injury shall be determined based on the obtained information confirmed by objective facts, provided that a correlation between increased volume of importation of goods and a material injury or a threat thereof is proved.

2.To detect a cause and effect correlation between increased import of goods and a material injury to domestic producers, the authorized body must consider all objective factors that affect the position in a given sector, in particular:

- 1)the pace and quantity of growth of the goods' import in absolute and comparative numbers;
- 2)the share of increased import in the domestic market;
- 3)changes in the level of sales;
- 4)the production of the goods by domestic producers;
- 5)the productivity, facility workloads, profit and loss amounts, employment.

3.In the even that, in addition to increased imports, there are other factors that cause material injury to domestic producers, such material injury may not be attributed to increased import of the goods.

4.Based on the actual information obtained in the course of investigation, the authorized body may issue preliminary determination concerning increased import of goods and material injury or a threat thereof to domestic producers.

### **Article 17. Application of Provisional Safeguards**

Based on the preliminary affirmative determination issued by the authorized body, the Government of the Republic of Kazakhstan shall pass a resolution concerning the introduction of provisional safeguard measures provided that an appropriate investigation is conducted simultaneously.

Provisional safeguard measures shall be introduced in critical circumstances, if a delay thereof may cause material injury to domestic industry, that will be difficult to mend.

Provisional safeguard measures shall be applied only by the customs authorities under the Resolution of the Government of the Republic of Kazakhstan concerning the introduction thereof with respect to the goods that are under investigation.

In the event that, based on the results of an investigation, the authorized body makes a decision that increased imports do not cause a material injury to domestic producers, then provisional safeguard measures must be canceled, and the payer shall have a right to have the previously paid amount refunded, as prescribed by the legislation of the Republic of Kazakhstan.

If provisional safeguard duty is introduced in the amount higher than the rate of provisional safeguard measure, the difference shall not be charged to the payer for the paid period.

### **Article 18. Publication of Safeguards Introducing Resolution**

Provisional safeguard measures shall take effect as of the moment of publication of the resolution concerning the application of provisional safeguard measures in the official press media. Such publication must contain a rationale for introducing such provisional safeguard measures.

### **Article 19. Duration of Provisional Safeguards**

The duration of provisional safeguards must not exceed 200 days.

The duration of provisional safeguards shall be included in the total duration of provisional safeguards as contemplated in article 24 hereof.

## **Article 20. Investigation Completion**

The investigation conducted by the authorized body shall be completed with preparation of the final determination to be forwarded to the Government of the Republic of Kazakhstan:

To terminate the investigation due to lack of sufficient evidences of material injury or a threat thereof to domestic producers as a result of import of goods that have been under investigation;

To ascertain the fact of material injury or a threat thereof to domestic industry as a result of increased import of goods and propose that Government of the Republic of Kazakhstan applies safeguards.

## **Article 21. Safeguards**

The decision to apply safeguards shall be made upon suggestion and based on the findings of the authorized body. The said decision shall be made effective as of the publishing date thereof in the official press media.

Safeguard measures shall apply in the form of a limitation on imported quantities of the goods, setting quotas and/or introducing safeguard duties.

## **Article 22. Determination of Safeguards Amount**

Safeguard measures must apply in the amount sufficient to rectify negative effects of import of the goods that have been under investigation.

The amount of safeguards may not increase within the entire term of the application thereof. The amount thereof may be reduced by the resolution of the Government of the Republic of Kazakhstan upon a request of the authorized body provided that duration of a safeguard lasts over one year.

If the duration of a safeguard exceeds three years, a second investigation must be conducted at most one and a half years after the introduction thereof. As a result of such second investigation, the safeguards may be either extended or canceled.

If the duration of safeguards is extended as a result of a second investigation, the terms of application of such measures may not be more restrictive than those for the original term of the safeguards.

## **Article 23. Safeguard Application**

Under the resolution of the Government of the Republic of Kazakhstan concerning the introduction of safeguard duties, the customs authorities shall charge the said duties on all imported goods that have been under investigation. Such safeguard duties shall be charged irrespective of customs duties, taxes and other fees.

If safeguard measures are applied in the form of a quota, the import quota rate must not reduce imported volume lower than the average level for the preceding period, unless it is proved that a different decision should be made to prevent or rectify material injury.

The Government of the Republic of Kazakhstan may establish import quotas for individual countries within the limits of an annual import quota amount introduced as a safeguard measure.

The Government of the Republic of Kazakhstan shall establish import quotas for importing countries after discussions with them taking into account their interests in importing such goods.

Such quotas may be distributed among countries subject to agreement with major importing countries that are interested in exporting such goods to Kazakhstan. Should such agreement be impossible to reach, quotas may be fixed pro rata to shares of the previous imports among importing countries as opposed to the total quantity or import price of the goods.

If necessary, the Government of the Republic of Kazakhstan may distribute import quotas among individual importing countries given absolute and comparative growth of imports from individual foreign states (commonwealth of foreign states).

#### **Article 24. Safeguards Duration**

Safeguard measures shall be effective for the period required to prevent or rectify material injury and adjust domestic producers of the goods to competitive environment. This period must not exceed four years, unless otherwise provided by paragraph 2 of this article.

The Government of the Republic of Kazakhstan may extend term of protective measures upon application or on the Government's own initiative provided that a given safeguard measure is still required to prevent or rectify material injury.

As a general rule, the entire term of the safeguard measure, including the term of any provisional measure, the original term and any extensions thereof, must not exceed eight years.

In the event that applied measures are detected to have been irrelevant, they must be canceled or the amount thereof must be changed upon request of the authorized body.

#### **Article 25. Repeated Safeguards Application**

1.Safeguard measures may be applied repeatedly to the goods that have already undergone safeguard measures only upon the expiration of the period that equals the term of application thereof. In such case, the minimum non-imposition period must be at least two years.

2.Safeguard measures may be repeatedly applied to the goods, if the original term of application thereof is six months and less, provided that the following conditions are met:

- 1)At least one year has passed since safeguard measures have been introduced;
- 2)Such safeguard measures have not been applied to given goods more than two times within five years preceding the last date of introduction of safeguards.

#### **Article 26. Investigation Completion Notice Publication**

A decision to apply safeguard measures shall be made effective as of the publishing date thereof in the official press media. Such publication must contain the reasons and rationale for accepting or rejecting of importers' arguments or claims.

#### **Article 27. Determination Challenging Procedure**

The involved parties shall have a right to challenge determinations and actions taken within the period of investigation concerning safeguard measures in court, as defined in the legislation of the Republic of Kazakhstan.

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President of the Republic of Kazakhstan  
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