

**Law of Ukraine**  
**“On Safeguards of the National Industry**  
**Against Dumped Imports”**

**Aanalysis**

**Contents**

1. Introduction
2. Contents of the Law
3. Sphere of application of the Law
4. Government bodies performing anti-dumping investigations
  - 4.1. Composition and functions of the Committee
  - 4.2. Functions of the Ministry
  - 4.3. Functions of the Customs Service
5. Anti-dumping procedures
  - 5.1. Definition of the national industry
  - 5.2. Procedure for submission of an application
  - 5.3. Conditions of initiation of an anti-dumping procedure
  - 5.4. The volume of the anti-dumping imports, which may be disregarded
6. Anti-dumping investigation
  - 6.1. Notification on the initiation of an investigation by interested parties
  - 6.2. Performance of an anti-dumping investigation
    - 6.2.1. The period of performance of an investigation
    - 6.2.2. Questionnaires
  - 6.3. Determination of the normal value of the dumped imports
    - 6.3.1. Determination of the ordinary trade operations
    - 6.3.2. Other methods of determination of the normal value
  - 6.4. Determination of an export price
  - 6.5. Margin of dumping
  - 6.6. Determination of a sale transaction
  - 6.7. Injury determination procedure
7. Provisional and definitive anti-dumping measures
  - 7.1. Provisional anti-dumping measures
  - 7.2. Undertakings of an exporter
  - 7.3. Definitive anti-dumping measures
  - 7.4. Restriction on imposition of the anti-dumping duties
- 7.5. Minimum price of a product
8. Mandatory registration of import contracts
9. Products with a short production cycle
10. Court hearings
11. Conclusions

## 1. Introduction

The draft Law of Ukraine “On Safeguards of the National Industry Against Dumped Imports”<sup>1</sup> (hereinafter referred to as Law) has been prepared by the Cabinet of Ministers of Ukraine in the last three years.

This legislative Law is based on the basic principles of international multilateral agreements of the Uruguay Round<sup>2</sup> which regulate the activities of the World Trade Organization (WTO), namely the agreements on the application of the anti-dumping measures<sup>3</sup> (hereinafter referred to as the WTO Agreement). The Agreement provides a procedure for the application of anti-dumping measures by countries which are WTO members.

The Law defines dumping as the import of a product into the territory of Ukraine at a lower price than the comparable price of the like product in the exporting country if the import causes injury to a national producer of a like product.

The Law determines a mechanism of safeguards for a national producer against imports from other countries, customs or economic unions, which are the object of dumping. It regulates the procedure of initiation and performance of an anti-dumping investigation and the application of anti-dumping measures.

At present, a Ukrainian producer is protected by means of the following mechanisms:

- use of technical barriers for imported products, which include the mandatory standardization and certification requirements for imported products<sup>4</sup>;
- introduction of quota and licensing for imports<sup>5</sup>;
- safeguard measures, which include application of tariff or non-tariff (quantitative) restrictions to imports of agricultural products<sup>6</sup>, etc.

Besides adopting the Law, Ukraine has introduced another mechanism for the protection of the national producer. On the whole this mechanism conforms with the relevant rules of international law.

## 2. Contents of the Law

The Law is divided into seven chapters.

The first chapter of the Law generally provides for the terms, sphere of implementation and bodies in which the performance of anti-dumping investigation is vested.

The second chapter provides a procedure for the calculation of the normal value of a product. The normal value shall be used to compare it with an actual price of a product imported into Ukraine with subsequent determination whether such imported product shall be an object of dumping.

The third chapter provides a procedure for an anti-dumping investigation.

---

<sup>1</sup> The Law of Ukraine “On Safeguards of the National Industry Against Dumped Imports,” No.330-XIV of December 22, 1998

<sup>2</sup> “The Results of Uruguay Round of Multilateral Trade Negotiations: texts of the official documents”, Kiev, “Vymir”, Secretariat of the Governmental Commission on Ukraine’s Accession to GATT/WTO, 1998 p. 520.

<sup>3</sup> Ibid, “Agreement on Application of the Article VI of the General Agreement on Tariffs and Trade, 1994, p. 157.

<sup>4</sup> Decree of the Cabinet of Ministers of Ukraine “On Standardization and Certification,” No.46-93 of May 10, 1993

<sup>5</sup> The Law of Ukraine “On Foreign Economic Activity,” No.959-XII, of April 16, 1991.

<sup>6</sup> Decree of the President of Ukraine “On Application of Restrictions to Imports of Products Pursuant to Rules and Principles of the GATT/WTO System,” No.478/96 of June 27, 1996.

The Law of Ukraine “On State Regulation of Imported Agricultural Products,” No.468/97, of July 17, 1997.

The fourth chapter provides a procedure for the initiation and termination of anti-dumping measures.

The fifth chapter provides time-limits for anti-dumping measures, their review, the resumption of an anti-dumping investigation, and reimbursement of paid anti-dumping duties.

The sixth chapter contains general and special provisions for the levying of anti-dumping duties.

Finally, the seventh chapter provides a procedure for the submission of information to interested parties, the notification of the competent authorities of the interested parties, factors of national interest, and the procedure for the implementation of the Law.

### **3. Sphere of Implementation of the Law**

This Law applies to the imported product which is the object of dumping, and where such product causes injury to a national producer of a like product.

Should Ukraine join the WTO, sub-paragraph 2 of paragraph 2 of the article 2 of this Law, which “shall not exclude application” of the measures stipulated in the framework of the General Agreement on Tariffs and Trade (GATT) and WTO, shall come into force.

Further, pursuant to paragraph 2 of article 2, special measures shall apply in the sphere of agriculture along with the special regulations established pursuant to the international agreements of Ukraine ratified by the Supreme Rada\* of Ukraine.

For example, the legislation of Ukraine provides for the application of tariff and non-tariff regulations to agricultural imports<sup>7</sup>. The tariff regulation shall establish regular and seasonal rates of import duty for agricultural products. The non-tariff regulation shall be carried out by means of establishing annual quotas and certification for agricultural imports.

To this end, Ukraine shall reserve the right to apply additional measures by means of tariff and non-tariff regulation in the sphere of agriculture. In other words, Ukraine shall influence the import of agricultural products in two ways: by means of measures set out in the Law, and by means of measures envisaged in the Law or to be envisaged in the future in matters relating to the state regulation of agricultural imports.

However, it turns out that in this Law, application of the additional measures is subject to certain circumstances. Surely, such uncertainty does not make the provisions of the Law clear and accurate.

### **4. Bodies Performing Anti-Dumping Investigations**

The performance of an anti-dumping investigation is vested in the Interdepartmental Committee for Foreign Trade (hereinafter referred to as the Committee), the Ministry for Foreign Economic Relations and Trade (hereinafter referred to as the Ministry), and the State Customs of Ukraine (hereinafter referred to as the Customs).

#### **4.1. Composition and Functions of the Committee**

The Committee shall consist of representatives of more than ten ministries and agencies of Ukraine, including the Ministry of Internal Affairs and the Security Service of

---

\* The Parliament of Ukraine

<sup>7</sup> The Law of Ukraine “On State Regulation of Agricultural Imports” No.468/97, of July 17, 1997

Ukraine. The Chairman of the Committee shall be the Minister of Foreign Economic Relations and Trade.

The most important functions of the Committee shall be:

- initiation of an anti-dumping investigation;
- making decisions on the existence of dumping and injury caused thereby;
- making decisions on the application of anti-dumping measures.

#### **4.2. Functions of the Ministry**

The Ministry shall directly carry out the anti-dumping procedures and anti-dumping investigations.

The following matters shall be within the competence of the Ministry:

- notification of the interested parties of initiation of an anti-dumping investigation;
- collection of information for an anti-dumping investigation;
- submission of a report to the Committee on the results of an anti-dumping investigation.

#### **4.3. Functions of the Customs**

The Customs shall collect anti-dumping duties and carry out the control over the payment thereof.

### **5. Anti-Dumping Procedure**

The Ministry shall initiate an anti-dumping procedure with the purpose of establishing the existence of dumping and injury caused thereby. In the event Ukraine joins the WTO, paragraph 2 of Article 38 of the Law provides that the Ministry shall notify the competent authorities of the exporting country about the initiation of an anti-dumping procedure.

#### **5.1. Determination of the National Producer**

Pursuant to the Law a national producer shall normally initiate an anti-dumping investigation. A national producer means an aggregate number of producers of similar products or those producers whose aggregate production of such products constitutes the major proportion of the whole amount of like products being manufactured in Ukraine.

#### **5.2. Procedure of Submission of an Application**

A procedure for an anti-dumping investigation shall be initiated upon submission of an application. Where a national producer can provide evidence of the existence of dumping, he may direct a written application to the Ministry.

An application may be directed also by a trade union of employees of an enterprise of the national industry.

An application shall contain not only evidence of the existence of dumping, but evidence of injury and causal link between them.

An application shall also contain the following information:

- information about the applicant;
- the name of the country of origin or the exporting country;
- information about the allegedly dumped product ;
- the volume of production of the like product in Ukraine;
- the prices at which the imported product is sold for consumption in the domestic market of the country of origin or the exporting country;
- how the imported product affects the market of Ukraine, the resulting impact thereof, etc.

An application may be withdrawn by an applicant in the course of an anti-dumping procedure prior to the initiation of an anti-dumping investigation. In such cases, the application shall be considered non-existent.

### **5.3. Conditions of Initiation of an Anti-Dumping Procedure**

An anti-dumping procedure may be initiated if an application on behalf of a national producer is supported by other producers, who produce more than 25 per cent of the aggregate production of the like product in Ukraine. For the purpose of initiation of an anti-dumping investigation, an application must be supported by Ukrainian producers, whose aggregate production constitutes not less than 50 per cent of the total volume of production of the like product in Ukraine. The aforementioned conditions conform with paragraph 4 of Article 5 of the WTO Agreement. The Ministry shall review submitted evidences and determine whether they are sufficient to initiate an anti-dumping investigation.

### **5.4. The Volume of Dumped Import Which May Be Disregarded**

Where the volume of a dumped import is insignificant and may be disregarded, the countries – members of the WTO shall not apply anti-dumping measures thereto.

Pursuant to paragraph 9 of Article 12 of the Law, if Ukraine joins the WTO, an anti-dumping investigation shall not be carried out with regard to the importing country – WTO member if the volume of the dumped imports of such country is less than 1 per cent of the total volume of consumption of the like product in Ukraine; however, provided that the total volume of import from such countries – members of the WTO shall not be more than 3 per cent of the total consumption of the like product in Ukraine.

In the WTO Agreement, the aforementioned volumes are 3 and 7 per cent respectively. Accordingly the present situation is that any volume of dumped import may be subject to an anti-dumping investigation. If Ukraine joins the WTO, the anti-dumping procedures shall not be applied to insignificant volumes of dumped imports from WTO member countries. However, in such cases Ukrainian legislation will be stricter towards the volumes of a dumped import that will not trigger an investigation.

## **6. Anti-Dumping Investigation**

An anti-dumping investigation shall be carried out for the purpose of establishing the existence of dumping and injury, and for the application of anti-dumping measures. An anti-dumping investigation shall not hinder the procedure of customs clearance.

### **6.1. Notification of Interested Parties on Initiation of the Investigation**

Upon the termination of an anti-dumping procedure, the Ministry shall submit a report to the Committee. The Committee shall make a decision on the initiation of an anti-dumping investigation pursuant to the submitted application, provided that the latter contains sufficient evidence of the existence of dumping, injury and a causal link between them.

Prior to the initiation of an anti-dumping investigation the Committee and the Ministry shall not publicize information contained therein.

Where a decision has been made to initiate an anti-dumping investigation, the Ministry must publish a notice thereof in the newspaper “Uriadovy courier,”\*, published of the Cabinet of Ministers of Ukraine. The Ministry shall notify the interested parties by providing them with the text of a non-confidential version of an application. Where the number of interested parties is too great, a notification shall be provided to the competent authorities of the exporting country only.

## **6.2. Anti-Dumping Investigation**

A decision on the initiation of an anti-dumping investigation shall normally be made by the Committee on the recommendation of the Ministry within thirty days after submission of an appropriate application.

### **6.2.1. Duration of investigation**

The duration of an investigation shall be normally up to one year but not less than six months. In some cases this term may exceed one year, but not be more than fifteen months. By comparison, in paragraph 10 of the Article 5 of the WTO Agreement, the terms of an anti-dumping investigation shall not exceed 18 months.

### **6.2.2. Questionnaires**

The Ministry shall notify the interested parties:

- (1) of an anti-dumping investigation;
- (2) about initiation of such an investigation;
- (3) and provide them with questionnaires.

The questionnaires shall be provided for the purpose of obtaining information and evidence to be used in the course of the anti-dumping investigation. The responses in Ukrainian shall be directed to the Ministry within thirty days from the date of receipt of the aforementioned questionnaire.

The Law (Article 32) provides detailed regulation for the protection of the confidential information received from interested parties with guarantees of the observance of commercial and state secrets in the course of investigation.

The Law does not clearly provide for transmission of answers to the responses of interested parties by means of e-mail. The WTO Agreement permits e-mail (see Annex II).

## **6.3. Determination of the Normal Value of the Dumped Import**

In order to determine whether or not the imported product is dumped, the export price of such product shall be compared with its normal value. The normal value normally

---

\* Government courier

shall be determined on the basis of prices established in the ordinary course of trade carried out by the independent buyers in the exporting country.

### **6.3.1. Determination of an ordinary trade transaction**

For determination of the normal value of an imported product, the sales volume of the like product in the domestic market of the exporting country shall be used if the volume of such sales is not less than 5 per cent of the volume of sales of the product in Ukraine. The lesser per cent of the sales volume may be used, if the sales volume is sufficient to determine the normal value. Where it is proved that prices for trade transactions in the exporting country have been formed on a non-market basis, such transactions may be disregarded in the determination of the normal value. The WTO Agreement does not provide for such exclusion.

### **6.3.2. Other methods of the determination of the normal value**

Where there is no opportunity to use the sales information for a product in the exporting country, the normal value of a product may be determined by the following two methods:

- on the basis of the production costs in the country of origin plus a reasonable amount for selling, administrative and other costs, and profit;
- on the basis of export prices practiced in the ordinary course of trade in an appropriate third country.

### **6.4. Determination of the Price Value**

Along with determination of the normal value, the actual export price shall be also determined. The export price of a product shall mean the price actually paid or payable for a product for delivery in Ukraine from the exporting country. In cases, where there is no export price or where the Ministry considers the export price to be unreliable the export price may be constructed on another substantiated basis.

### **6.5. Margin of Dumping**

If the normal value of a product exceeds the export price of the product imported into Ukraine, one may conclude that dumping exists. The quantitative index of dumping shall mean the margin of dumping and be determined as a difference between the normal value and the export price of a product.

A comparison of the normal value with export price shall be made on the basis of equal basic conditions of delivery, normally, on the basis of ex-works delivery (EXW).

An anti-dumping investigation shall be terminated if the margin of dumping is insignificant, i.e., less than 2 per cent.

### **6.6. Determination of Sales Transaction**

Article 1 of the Law gives the following definition for sales: “Sales shall mean a transfer of property by any person to ownership or use and/or possession or/and at disposal of other person, e.g. under the terms of purchase and sale contracts, property

lease, other civil law agreements, or in the event of change of one taken obligations to another or change in the terms of obligations to be performed”.

If such definition is true, than a sale shall also mean not only a lease contract, but any transaction, where the product is transferred within the scope of a commission, storage, guarantee, or other civil law contract which does not provide for transfer of property rights to the product in question.

The above definition of the Law is not in conformity with either the Civil Code of Ukraine<sup>8</sup> or basic taxation laws<sup>9</sup>, where sales of product are defined as a transfer of a product from one person to another for payment with an appropriate transfer of property rights thereto.

Disregard of payment in the definition of sales transaction may lead to humanitarian or technical assistance or a gift be treated as a sales transaction.

Moreover such definition of the sales transaction allows to take into account the value of products, which are transferred pursuant to guarantee or storage contracts, which naturally do not reflect the actual prices of such product.

### **6.7. Procedure for Determination of Injury**

Article 10 of the Law establishes a procedure for and methods of determination of injury caused to the national industry by the sale of a dumped product.

An injury linked with a dumped product is determined in the Law as:

- serious injury caused to the national industry;
- threat to cause injury to the national industry;
- serious impediment to the creation or expansion of production by a national producer of a like product.

While analyzing to what extent the dumped import affects the prices for the like products in the Ukrainian market, the Ministry shall determine:

- whether there has been a sufficient decrease in prices for the like product in the market of Ukraine;
- whether the dumped product has hindered an opportunity to increase prices for the like product.

The additional negative impact of the dumped imports on the national industry may also mean:

- explicit or a potential decrease in the volume of production and the utilization of production capacity;
- deterioration of indices pursuant to liquidity, commodity stocks, employment of the population, level of salaries and wages, attraction of investments, etc.

Bearing in mind the importance of objectivity in an investigation carried out to determine injury, both the Law and the WTO Agreement emphasize that none of the

---

<sup>8</sup> The Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR “On Enforcement of the Civil Code and the Code of Civil Procedure of the Ukrainian SSR,” No.1990-06, of December 12, 1997.

<sup>9</sup> The Law of Ukraine “On Value Added Tax,” No.168/97, of April 3, 1997.

The Law of Ukraine “On Taxation of Profits of Enterprises,” No.283/97, of May 22, 1997.



aforementioned factors characterizing a negative impact of a dumped product on the national industry shall be of an unconditional decisive significance to establish injury to the national industry.

## **7. Provisional and Definitive Anti-Dumping Measures**

Upon the termination of an investigation, the Ministry shall submit to the Committee evidence of dumping and injury to the national industry together with calculations of the normal value and export price and the rate of margin of dumping. This chapter of the Law also conforms to the procedures for the application of anti-dumping measures.

### **7.1. Provisional Anti-Dumping Measures**

For the purpose of the protection of national interests and the prevention of injuries to the national industry, the Committee may decide to apply in the course of an anti-dumping investigation provisional measures to an exporter of a dumped product.

The provisional anti-dumping measures may be applied after:

- an anti-dumping procedure and the investigation have been initiated;
- the interested parties have been informed of the initiation of an investigation;
- the Ministry has made preliminary determination of the existence of dumping and injury linked thereto.

A provisional anti-dumping duty, the rate of which shall be established by the Committee, may be levied thereon as a provisional measure.

The payment of a provisional duty may be made in cash or non-cash form, or by a deposit or bond.

A rate of a provisional duty shall not exceed an anti-dumping margin.

A provisional duty shall be levied by the customs authorities irrespective of the payment of taxes, fees, and other prescribed payments. A provisional duty shall be established for a period of up to 4 months. The Committee may extend this term up to 6 months on request of the exporters who are engaged in a significant volume of trade with the like product.

The WTO Agreement states that the authority, which carries out an investigation, may extend the aforementioned time-limits to 6 and 9 months respectively if the rate of a provisional duty is sufficient to prevent injury to be caused and is less than the rate of the anti-dumping margin.

### **7.2. Undertakings of Exporters**

The Committee, having obtained evidence of the existence of dumping and injury linked thereto, may suspend an anti-dumping investigation without the application of anti-dumping measures. This can be done if the exporter, towards whom the aforementioned investigation is directed, provides the Committee with voluntary undertakings to review the prices or terminate the export at dumped prices.

Such an undertaking shall provide for the prices, which must not be higher than are needed to compensate a margin of dumping, if the Committee considers them sufficient to eliminate injury linked to the dumping in question. The Committee may, if it decides that such undertakings are insufficient to eliminate the consequential impact of

dumping, levy on such exporter the provisional or definitive duties. A definitive duty may be levied by the Committee if nullification of the offered undertakings or the violation of their provisions have been established. The Committee may suspend an anti-dumping investigation if an exporter undertakes to suspend the dumped import. Where, in the course of investigation, the Ministry makes a negative determination of the existence of dumping and injury linked thereto, the undertakings of the exporter shall cease to be effective.

### **7.3. Definitive Anti-Dumping Measures**

Definitive anti-dumping measures shall be applied, if:

- the Ministry has made negative determination of the existence of dumping and injury linked thereto;
- national interests require the anti-dumping measures to be applied;
- the Ministry provides the Committee with appropriate recommendations not later than one month prior to termination of the term of application of the provisional anti-dumping measures (if any).

Definitive anti-dumping measures may be applied in the form of a payable duty, and shall be paid irrespective of the payment of other taxes and charges, including duties and customs fees. Prior to making a decision on the application of definitive measures, the Committee shall review the comments of an exporter with relation to products against which the aforementioned measures are to be applied. The definitive anti-dumping duty shall be levied pursuant to the decision made by the Committee and be effective within the time-limits and in the amounts which are needed to eliminate dumping and injury linked therewith. The anti-dumping measures shall not be applied for a period of more than 5 years.

The conditions of application of the anti-dumping measures may be reviewed by the Committee on the basis of an application submitted by an interested party, the central executive body of the government of Ukraine, or a Ukrainian producer. A substantiated application shall be reviewed not sooner than one year after the making of a decision on application of such measures. Pursuant to the decision of the Committee, the anti-dumping measures may be terminated if there is adequate evidence to prove that such termination would not likely lead to a continuation or recurrence of dumping.

### **7.4. Restrictions to Application of Anti-Dumping Measures**

The anti-dumping and countervailing duties shall not be simultaneously levied on one and the same supplier of an imported product. A countervailing duty, pursuant to the law of Ukraine, shall be levied in cases where imported products are introduced into the territory of Ukraine at lower prices due to the result of a state subsidy<sup>10</sup>.

### **7.5. Minimum Product Price**

The rate of the provisional or definitive anti-dumping duty shall not be higher than it is needed to compensate a margin of dumping. Article 14 of the Law provides for a definition and calculation of the minimum price of a product at which sales thereof would

---

<sup>10</sup> The Law of Ukraine "On Safeguards of the National Industry Against Subsidized Imports," No.331-XIV, of December 22, 1998

not likely cause injury to the national industry. In other words, there is an attempt to determine the rate of the anti-dumping duty in a quantity which would correspond to the size of injury caused by dumping and which generally could be less than an anti-dumping margin; However, shortcomings exist.

First, in order to calculate the minimum price, three additional determinations have been introduced:

- price of a product, which is subject to an anti-dumping investigation;
- actual market price;
- price of a product of a national producer, “received from such national producer and/or from other sources.”

Second, the rate of the provisional or definitive anti-dumping duty has been defined in the Law as a difference between minimum value and customs price (CIF conditions), i.e. the actual price of a product. To adhere to the methods illustrated in the Law for calculation of the minimum price, such difference may become greater than the rate of the margin of dumping, since the minimum price, other than the normal price, is not tied to the market of the exporting country.

## **8. Mandatory Registration of Import Contracts**

The Committee may make a decision on the mandatory registration of import contracts into Ukraine. Such a decision by the Committee may be based on a substantiated application of an interested party, the executive branch of the government, or a Ukrainian producer. An interested party shall provide grounds for refusal to pay the anti-dumping duty. The term of validity of mandatory registration shall expire within nine months.

Products shall be imported into Ukraine under the contracts subject to registration, provided a license is issued by the Ministry and the documents proving that an appropriate amount has been deposited are available.

Thus, it appears that one should register contracts for the supply of products, on which anti-dumping duties have already been levied, though the Law (paragraph 4 of the Article 28) sets out that “the decision on registration... shall identify the approximate rate of an anti-dumping duty calculated for the purpose of the possible imposition of such a duty in the future.”

Moreover the mandatory registration of contracts in effect becomes an additional non-tariff restriction. Naturally, the WTO Agreement does not mention such a restriction.

## **9. Short Production Cycle Products**

Some unusual anti-dumping measures are provided for short production cycle products.

The short production cycle products, pursuant to the Ministry and the Committee, are those products which are considered to be old due to the appearance of new know-how within four years after the sales thereof commenced.

Where this is the case, national producers, processing or manufacturing a short production cycle product, may apply to the Ministry for the creation of an appropriate trade category and the inclusion of the dumped product therein. The purpose of the creation of such a trade category is to accelerate the process of review by the Ministry and the decisionmaking by the Committee with regard to the application of provisional anti-dumping measures to the goods imported under the respective trade categories.

## 10. Court Hearing

There is a provision not present in the law and important in the WTO Agreement which provides WTO member state having anti-dumping legislation, to have courts, arbitration or administrative tribunals, or procedures for effective consideration of the matters connected with the duration and review of anti-dumping measures and undertakings of exporters. Such tribunals or procedures shall be independent of state authorities which carry out anti-dumping procedures.

Ukrainian legislation provides for appeals in court proceedings against governmental bodies and legislation which allow interested parties to appeal the decisions of the authorities carrying out anti-dumping investigations<sup>11</sup>.

## 11. Conclusions

The Law establishes a mechanism for the protection of national producers against dumped imports from other countries, customs or economic unions. It regulates the procedure for the initiation and performance of anti-dumping investigations as well as for the application of anti-dumping measures. Thus, having adopted the Law, Ukraine established one more mechanism for the protection of national producers.

Obviously, a positive aspect of the Law is that the provisions of the Law correspond to the WTO Agreement On Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. Such conformity extends not only to general principles of the WTO Agreement, but also to time and quantitative requirements.

However, we think that there are significant drawbacks in the Law.

The Law is twice as long as the Agreement), and it is imperfect in structure – (the terms of application of anti-dumping measures are considered in thirteen Articles (!): Articles 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28) which make it difficult to understand.

Pursuant to Article 38 of the Law, if Ukraine joins the WTO, the following provisions of the Law shall come into effect:

- measures stipulated in the framework of GATT/WTO shall not be excluded;
- an anti-dumping investigation shall not be carried out where the importing country is a WTO member if the volume of its dumped import is less than 1 per cent of the total volume of consumption of a like product in Ukraine provided that the aggregate volume of imports from these countries is less than 3 per cent of the total volume of consumption of a like product in Ukraine (in the Agreement it is 3 and 7 per cent respectively);
- upon the receipt of an application and prior to the initiation of an anti-dumping investigation, the Ministry shall notify the competent authorities of the exporting country about the initiation of an anti-dumping procedure;
- an anti-dumping investigation shall be suspended without application of the anti-dumping measures, if the appropriate margin of dumping is less than two per cent.

The first of the four above sub-paragraphs appears to be of a merely declarative nature. Should Ukraine join WTO (which means signing and ratifying of the multilateral agreements of the Uruguay Round), the rules of international law which regulate the

---

<sup>11</sup> Code of Arbitration Procedure of Ukraine, No. 1798-XII, of November 6, 1991

activities of WTO shall automatically become a part of the Ukrainian legislation.<sup>12</sup> In this case, if the rules of national law conflict with the rules of international law, the rules of international law shall be applied in Ukraine.<sup>13</sup>

The provision of the Law laid down in the second sub-paragraph provides for stricter conditions for the volumes of imports than the WTO Agreement. Thus, after Ukraine joins WTO, these rules will lead to a conflict between the rules of national law and those of international law, and the conflict shall be settled in favor of the rules of international law.

What may perplex the situation is that the last two sub-paragraphs will become effective only after Ukraine's accession to WTO. We suggest that it would be more important, for example, to include in the list, provisions of Article 13 of the WTO Agreement allowing for the arbitration of questions covering the duration and review of anti-dumping measures and undertakings by the exporter.

Thus the Law contains provisions which, on the one hand make unclear the sphere of implementation of the Law and, on the other hand, create collisions in the effective legislation of Ukraine.

---

<sup>12</sup> Article 9 of the Constitution of Ukraine, No. 254, of June 28, 1996

<sup>13</sup> Article 17 of the Law of Ukraine "On International Agreements of Ukraine" No.3767-XII, of December 22, 1993