



Republika e Kosovës
Republika Kosovo - Republic of Kosovo
Kuvendi - Skupština - Assembly

Law No. 04/L-240

ON ANTI-DUMPING AND COUNTERVAILING MEASURES

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves:

LAW ON ANTI-DUMPING AND COUNTERVAILING MEASURES

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

By this Law are set out the rules on procedures for imposition of anti-dumping measures to the imports, which are dumping objects, and countervailing measures to the subsidized imports, in order to protect the domestic Kosovo industry and interests of the Republic of Kosovo.

Article 2
Scope

1. This Law applies to the anti-dumping and countervailing measures, which is dumped or benefits from subsidies of the government or a public authority of the exporting

country or the country of origin provided that the imports of the product cause or threaten to cause material injury to the domestic industry of the Republic of Kosovo.

2. Anti-dumping and/or countervailing measures shall be imposed only after respecting the relevant procedures and carrying out the investigations in accordance with the requirements specified in this Law.

Article 3 **Definitions**

1. Terms used in this Law have the following meaning:

1.1. **Kosovo** - the Republic of Kosovo;

1.2. **Ministry**- the respective Ministry for Trade and Industry;

1.3. **Commission** - the Evaluation Commission of Special Import Duties established in Article 26 of this Law;

1.4. **GATT** - the General Agreement on Tariffs and Trade of year 1994;

1.5. **Product under investigation** - the imported product to Kosovo which is subject of an investigation for dumping or subsidization;

1.6. **A product with identical characteristics** - i.e. alike in all respects to the product under investigation or in the absence of such a product another product which although it is not alike in all aspects has many characteristics closely resembling those of the product under investigation, an important criterion being whether the two products are competing with each other or are substitutable;

1.7. **Exporting country** - normally the country of origin of the product under investigation. In certain cases it may also be an intermediary country, except when the product passes only transit in the intermediary country or it has not been at least partly manufactured/produced in the intermediary country or when it may not have a comparable price in this country;

1.8. **Export price** - normally the price actually paid or payable for the product under investigation, when sold for export from the exporting country to Kosovo;

1.9. **Normal value** - normally a comparable price, paid or payable, by the first independent buyers for the like product, under normal market conditions, when it is intended for consumption in the country of origin or export;

1.10. **Dumping** - normally the import of goods into Kosovo with a lower export price than a comparable price for the like product intended for consumption under normal market conditions in the exporting country;

1.11. **Dumping margin** - normally the difference, expressed in percentage or actual amount, by which the weighted average normal value exceeds the weighted average export price to Kosovo;

1.12. **Domestic Kosovo Industry** - normally all Kosovo manufacturers/producers of the like product, or Kosovo manufacturers/producers, which together manufacture or produce the like product, which make up for more than fifty percent (50%) of the total production of the like product in Kosovo; if a Kosovo manufacturer/producers of the like product is related to an exporter or importer, or itself is the importer of the product under investigation, it may not be considered to be a member of the Kosovo industry for the purpose of this definition; the domestic Kosovo industry is not entitled to an anti-dumping or anti-subsidy proceeding when Kosovo manufacturers/producers expressly supporting the proceeding account for less than twenty five percent (25%) of the like product manufactured or produced by the domestic Kosovo industry as a whole;

1.13. **Interested Parties** - exporters, importers and foreign manufacturers/producers of the product under investigation, trade or business associations, if the majority of their members are manufacturers/producers of the product under consideration, exporters or importers of the product under investigation; governments of the exporting countries; Kosovo manufacturers/producers of the like product; Kosovo trade or business associations, if the majority of their members are manufactures/producers of the like product in Kosovo and Kosovo consumer associations;

1.14. **Investigation** - an investigation conducted by the Ministry in accordance with this Law, to determine the presence, level and past, actual or future effects of dumped or subsidized imports on the domestic Kosovo industry or any other interested parties. The investigations of the existence of dumping or subsidization and the consequent injury thereof are carried out simultaneously;

1.15. **Investigation period** - normally a period of at least six (6) months and usually one year prior and as closely as possible and appropriate to the initiation of the proceeding for the purposes of determining dumping or subsidization and the consequent injury caused;

1.16. **Subsidy** - a direct or indirect financial contribution provided by the government or other public authority in the exporting country or country of origin, which provides a benefit to an exporting company, enterprise or group of enterprises or industries in the exporting country or country of origin (recipient), as provided in Article XVI of the GATT 1994;

1.17. **Subsidy margin** - or the total amount of the subsidy means the absolute value of the financial benefits that the recipient received during the investigation period for subsidization;

1.18. **Injury** - material economic and/or financial damage to the domestic Kosovo industry, threat of material injury or material retardation or prevention of the establishment or development of a domestic Kosovo industry;

1.19. **Representative amount** - the amount of all production/manufacturing costs of product under investigation or of the like product, including administrative costs, other costs created with enterprise activities, and a reasonable profit for producers/manufacturers, all of them acting in normal market conditions;

1.20. **Anti-dumping measures** - the duty which is imposed on imports of a product under investigation that is the subject of dumping or an undertaking accepted, in order to offset the difference between the prices at which the product is exported to Kosovo (export price) and its normal value or an amount that would be adequate to remove the injury to the domestic Kosovo industry, whatever is the lower;

1.21. **Countervailing measures** - the duty which is imposed on imports of a product under investigation that is subsidized or an undertaking accepted, in order to offset the total amount of countervailable subsidies for the product under investigation or an amount that would be adequate to remove the injury to the domestic Kosovo industry, whatever is the lower;

1.22. **Government** - a Government or any other public authority or body within the territory of the country of export or the country of origin;

1.23. **Kosovo interest** - all the various economic and financial interests of all interested parties in Kosovo taken as a whole concerning the imposition or non-imposition of anti-dumping or anti-subsidy measures. The need to eliminate the trade-distorting effects of injurious dumping or subsidization and to restore effective and fair competition as well shall be given special consideration;

CHAPTER II DETERMINATION OF DUMPING

Article 4 Anti-dumping measures

Antidumping measures may be applicable to any dumped product whose importation and sale in Kosovo causes or threatens to cause material injury to the domestic industry.

Article 5

Normal value

1. In case where the exporter in the exporting country does not manufacture, produce or sell the like product, the normal value may be determined on the basis of prices of other producers or sellers in that country.
2. Comparable prices between parties which cooperate with each other or which have an agreement with each other may not be treated as being under normal market conditions and also may not be used in determining the normal value, unless it is ascertained that these prices are not influenced by their agreement or cooperation.
3. In order to determine normal value a sufficient amount of sales of the like product in the domestic market of the exporting country shall be used. This amount shall at least be five percent (5%) of the export sales amount to Kosovo. A smaller amount can only be taken if it is proven that it is sufficiently representative for the price level in the exporting country and for an accurate and proper comparison.
4. In cases where there is no sale at all or insufficient sales of the like product under normal market conditions or where because of any particular market situation in the exporting country such capacity of sales precludes the creation of a proper and accurate basis for the establishment of normal value, then the normal value of the like product shall be determined on the basis of the costs of production in the country of origin including a reasonable amount for selling costs, general and administrative costs and for reasonable profits of the exporter or of any other manufacturer/producer of the like product.
5. If such a determination according to paragraph 4. of this Article appears to be not feasible or appropriate, normal value shall be based on a representative amount of export prices under normal market and trade conditions from that country to an appropriate and comparable third country or on any other reasonable basis.

Article 6

Treatment of below-cost sales

1. The Ministry, when determining the normal value, takes normally into account only those sales made under normal market conditions. Sales of the like product in the internal market of the exporting country or sales to a third country at a price lower than the total unit costs of production (fixed and variable) plus selling, general and administrative costs and a reasonable profit, may be treated as not being under normal market conditions unless the Ministry determines that:
 - 1.1. such sales were only made for a specific short period of time (not more than six (6) months);
 - 1.2. such sales were only made in insignificant quantities;

1.3. the weighted average selling price of the transactions under investigation is not lower than the weighted average unit cost or the volume of sales below unit cost represents less than twenty percent (20%) of the sales being used for determine normal value;

1.4. such sales are made at prices that do recover all costs within a certain period of time; if the below cost prices per unit, at the time of sale, are above the weighted average unit cost for the period of investigation, it is considered that such prices allow the recovery of all costs.

Article 7

Calculation of costs when determining the normal value

1. The Ministry calculates the costs on the basis of the accounting and other business records and data submitted by the exporter or manufacturer/producer under investigation provided that these data are in accordance with the generally accepted accounting principles of the exporting country or country of origin and reflect reasonably and correctly the costs related to the like product and the export sales of the product under investigation.

2. The value and amount of selling, general and administrative costs and of the profit shall be calculated or established on the basis of information and data at the time of the arising of these costs and profit. These values have to be related to the production and sales under normal market conditions of the like product by the exporter or manufacturer/producer under investigation.

3. In cases where costs are not reasonably reflected in the accounting or other business records and, therefore, cannot be correctly and accurately determined, they shall be determined:

3.1. on the basis of weighted average of the actual values determined for other exporters or manufacturers/producers that are subject to the investigation provided they produce and sell the like product in the domestic market of the exporting country or country of origin; if this is not possible;

3.2. on the basis of actual values applicable to the manufacturing/production and sale, under normal market conditions, of the same general category of products for the exporter or manufacturer/producer in question in the domestic market of the exporting country or country of origin; if this is not possible;

3.3. on the basis of any other reasonable method, ensuring that the value determined for profit does not exceed the normally generated profit by other exporters or manufacturers/producers during the sale of products of the same general category in the domestic market of the exporting country or country of origin.

Article 8

Export price

1. The export price shall be the price actually paid or payable for the product under investigation when sold for export from the exporting country to Kosovo.
2. In cases where there is no export price or where this price is considered incorrect, inaccurate or unreliable, the Ministry may calculate and construct the export price on the basis of:
 - 2.1. the price at which the imported products were first resold to an independent buyer in Kosovo, or
 - 2.2. where the imported products were not first resold to an independent buyer, or were not resold in Kosovo under the same conditions as they were imported, on any reasonable basis.
3. In the cases mentioned in paragraph 2. of this Article, adjustments have to be made in the calculation of the export price for all profits, costs and taxes incurred between importation and resale so as to establish a reasonable and reliable export price at the Kosovo frontier level.

Article 9

Comparison of normal value and the export price

1. A fair comparison shall be made between the export price and the normal value. The comparison shall be made at the same level of trade, normally at the ex-factory level, in the country of export or country of origin and as closely as possible at the same time and taking into account all factors, sales conditions and differences which may affect price comparability when they are claimed by any interested parties and demonstrated by factual evidence. The comparison shall in each case take into account and make adjustments for differences in the physical characteristics of the product under investigation and the like product used for establishing the normal value, in sales quantities, sales costs and other sales conditions and in differences of currencies.
2. Factors for which adjustments are normally made are listed below while this list is only indicative and may not be exhaustive to:
 - 2.1. physical characteristics – adjustments shall be made for differences in physical characteristics and use of the products. They are made on the basis of a reasonable estimate of the market value or consumer perception in the exporting country or country of origin and in Kosovo of these differences. The adjustments may also be based on the differences in production costs if information or data on the prices are not available, or are not suitable for an accurate comparison;

2.2. direct and indirect import duties, costs and taxes – adjustments shall be made to the normal value for all differences in direct and indirect import duties, costs and taxes borne by the like product and by materials physically incorporated therein and not collected or refunded in respect to the product under investigation;

2.3. discounts, rebates and quantities – adjustments shall be made for all differences relating to discounts and rebates including those given for differences in quantities, if these quantities are determined properly and are directly related to the sales in question;

2.4. level of trade – adjustments shall be made for all differences in the level of trade and sales and distribution systems including any difference that may arise in Original Equipment Manufacturer or similar sales. An adjustment shall also be made where in relation to the distribution chain in Kosovo and the exporting country or country of origin it is shown that the export price, including a calculated and constructed export price, is at a trade level different from that of the normal value and that this difference has affected the price comparability. This shall be demonstrated by consistent and distinct differences in seller's or distributor's functions and the seller's or distributor's prices for the different levels of trade in the domestic market of the exporting country or the country of origin. The amount of the adjustment shall be based on the market value of the difference;

2.5. costs of transportation, insurance, handling, trading, loading - unloading and ancillary cost – adjustments shall be made for all differences in the costs directly related and incurred during transportation of the product under investigation from the premises of the exporter to the first independent buyer, where such costs are included in the prices charged. These costs will include the costs of transportation, insurance, handling, trading, loading - unloading and any ancillary cost;

2.6. packaging – adjustments shall be made for all differences in packaging costs directly related and incurred to the like product in the country of export or the country of origin and the product under investigation;

2.7. credits – adjustments shall be made for all differences in the cost of any granted credit for the sales under consideration, if it is a factor that was taken into account in the determination of the price charged;

2.8. costs of after-sales-services – adjustments shall be made for all differences in the direct costs of providing guarantees, warranties, technical assistance and other after-sales-services, as provided by law or in the sales contract of the like product;

2.9. fees – adjustments shall be made for all differences in fees paid in relation to sales under consideration to sales agents or other agencies concerned with the commercialization of the like product;

2.10. other factors - adjustments shall be made for all differences in other factors not mentioned above if it is demonstrated that they affect price comparability.

Article 10

Dumping margin

1. The dumping margin is normally determined by comparing during the investigation period the weighted average of normal values with the weighted average export prices of all transactions or by comparing for each transaction the individual normal value with individual export price on a transaction-to-transaction basis.
2. The dumping margin can also be established by taking the weighted average normal value and comparing it to all prices of individual export transactions to Kosovo. This should only be done if there is a pattern of export prices which differs significantly between different purchasers in Kosovo or time periods.
3. When dumping margins vary, a weighted average of all calculated dumping margins may be established.

CHAPTER III

DETERMINING SUBSIDIZATION

Article 11

General principle

1. A countervailing duty may be imposed for the purpose of offsetting any subsidy granted, directly or indirectly, for the manufacture/ production, export or transport of any product whose import and release for free circulation in Kosovo causes injury.
2. For the purpose of this Law, a product is considered to be subsidized if it benefits from a countervailable subsidy as defined in Articles 12 and 13 of this Law.
3. Such a subsidy may be granted by the government of the country of origin of the imported product, or by the government of an intermediate country from which the product is exported to Kosovo, known for the purpose of this Law as 'the country of export'.
4. Notwithstanding paragraphs 1., 2. and 3. of this Article, where products are not directly imported from the country of origin but are exported to Kosovo from an intermediate country, the provisions of this Law shall be fully applicable and the transaction or transactions shall, where appropriate, be regarded as having taken place between the country of origin and Kosovo.

Article 12
Definition of a subsidy

1. A subsidy shall be deemed to exist if:

1.1. there is a financial contribution by a government in the country of origin or export, that is to say, where:

1.1.1. a government practice involves a direct transfer of funds (for example, grants, loans, equity infusion), potential direct transfers of funds or liabilities (for example, loan guarantees);

1.1.2 government revenue that is otherwise due is forgone or not collected (for example, fiscal incentives such as tax credits); in this regard, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have been accrued, shall not be deemed to be a subsidy, provided that such an exemption is granted;

1.1.3. a government provides goods or services other than general infrastructure, or purchases goods;

1.1.4. a Government:

1.1.4.1.makes payments to a funding mechanism, or

1.1.4.2. entrusts or directs a private body to carry out one or more of the type of functions illustrated in sub-paragraphs 1.1.1, 1.1.2. and 1.1.3. of this Article which would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments; or

1.1.4.3. There is any form of income or price support within the meaning of Article XVI of the GATT 1994; and

1.1.4.4. a benefit is thereby conferred to an exporting company, enterprise or group of enterprises or industries (hereinafter referred to as 'certain enterprises').

Article 13
Countervailable subsidies

1. Subsidies shall be subject to countervailing measures only if they are specific.

2. In order to determine whether a subsidy is specific to certain enterprises within the jurisdiction of the granting authority, the following principles shall apply:

2.1. where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

2.2. where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to.

3. For the purpose of this Article, objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise. The criteria or conditions must be clearly set out by law, regulation, or other official document, so as to be capable of verification:

3.1. if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in sub-paragraphs 2.1. and 2.2. of this Article, there are reasons to believe that the subsidy may in fact be specific, other factors may be considered;

3.2. such factors are: use of a subsidy program by a limited number of certain enterprises; predominant use by certain enterprises; the granting of disproportionately large amounts of subsidy to certain enterprises; and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy;

3.3. in this regard, pursuant to subparagraphs 3.1. and 3.2. of this paragraph information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.

4. In applying paragraph 1. of this Article, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy program has been in operation.

5. A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. The setting or changing of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Law.

6. Notwithstanding paragraphs 2. and 3. of this Article, the following subsidies shall be deemed to be specific:

- 6.1. subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance. Subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision;
- 6.2. subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.
7. Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of evidence.

Article 14
Calculation of the amount of the countervailable subsidy

The amount of countervailable subsidies, for the purposes of this Law, shall be calculated in terms of the benefit conferred on the recipient who is found to exist during the investigation period for subsidization. Normally this period shall be the most recent accounting year of the beneficiary, but may be any other period of at least six (6) months prior to the initiation of the investigation for which reliable financial and other relevant data are available.

Article 15
Calculation of the benefit to the recipient

1. As regards the calculation of the benefit to the recipient, the following rules shall apply:
- 1.1. investment in equity by government shall not be considered to confer a benefit, unless the investment can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin and/or export;
- 1.2. a loan by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the enterprise receiving the loan pays on the government loan and the amount that the enterprise would pay for a comparable commercial loan which the enterprise could actually obtain on the market. In that event the benefit shall be the difference between these two amounts;
- 1.3 a loan guarantee by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the enterprise receiving the

guarantee pays on a loan guaranteed by the government and the amount that the enterprise would pay for a comparable commercial loan in the absence of the government guarantee. In this case the benefit shall be the difference between these two amounts, adjusted for any differences in fees;

1.4. the provision of goods or services or purchase of goods by a government shall not be considered to confer a benefit, unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

2. If there are no such prevailing market terms and conditions for the product or service in question in the country of provision or purchase which can be used as appropriate benchmarks, the following rules shall apply:

2.1. the terms and conditions prevailing in the country concerned shall be adjusted, on the basis of actual costs, prices and other factors available in that country, by an appropriate amount which reflects normal market terms and conditions; or

2.2. when appropriate, the terms and conditions prevailing in the market of another country or on the world market which are available to the recipient shall be used.

Article 16

General provisions on calculation

1. The amount of the countervailable subsidies shall be determined per unit of the subsidized product exported to the Kosovo. In establishing this amount the following elements may be deducted from the total subsidy:

1.1. any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;

1.2. export taxes, duties or other charges levied on the export of the product to Kosovo specifically intended to offset the subsidy.

2. Where an interested party claims a deduction, it must prove that the claim is justified.

3. Where the subsidy is not granted by reference to the quantities manufactured/produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization.

4. Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in paragraph 2. of this Article. Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with Article 15 sub-paragraph 1.2 of this Law.

5. Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period, and allocated as described in paragraph 2. of this Article, unless special circumstances arise justifying attribution over a different period.

Article 17

Method of calculation of the subsidy amount

1. The amount of the subsidy to the recipient for the product under investigation shall be calculated for each investigated subsidy or subsidy program, in accordance with paragraph 2. of this Article. The total of these amounts for a subsidy or subsidy program will be the total amount of the subsidization of the manufacturer or exporter for this product.

2. To calculate the amount of subsidization of the product under investigation for several recipients of a certain subsidy or subsidy program, the Ministry determines:

2.1. in the first phase, the total value of subsidy given to the recipient from a certain subsidy or subsidy program and the date of receipt;

2.2. in the second phase, the part of the total value of the subsidy that will be charged to the subsidy investigation period;

2.3. in the third phase, the total value of that sale of the recipient to whom will be attributed the period of investigation of subsidy.

Article 18

Calculation of specific subsidy amount

1. The Ministry determines a subsidy duty specific for every recipient for the product under investigation.

2. The Ministry, regardless of paragraph 1. of this Article, in cases where the number of recipients is very large, then the Ministry may restrict the investigation to a reasonable number of recipients or products under investigation that can reasonably be investigated.

3. Any selection of the recipients or of the types of products that is made in accordance with paragraph 2. of this Article is made after consultations with the recipients.

4. In cases where the Ministry restricts the investigation in accordance with paragraphs 2. and 3. of this Article, it determines a specific subsidy amount for each recipient who voluntarily and in time presents the necessary documents for the investigation.

CHAPTER IV DETERMINING INJURY

Article 19 Definition of injury

1.. Injury from dumped or subsidized imports shall be determined not only when it causes material economic or financial damage directly to the domestic Kosovo industry, but also when there is a threat of that injury or there is a material retardation of the establishment or development of a domestic Kosovo industry.

2. The determination of the injury shall be based on evidence and shall involve an objective and fair examination of:

2.1. the volume of dumped or subsidized imports, especially if the volume recorded a significant increase in absolute or relative terms in relation to industrial production or consumption of the like product in Kosovo;

2.2. the subsequent impact of those dumped or subsidized imports on the domestic Kosovo industry. This impact shall be established on the basis of existing or potential economic and/or financial information, data and indicators, such as a decline in sales, prices and/or outputs, prevention of price increases, reduction in market share, productivity, and/or profits, or a negative impact on reserves, employment, wages, liquidity, cash flow, return on investment, capacity utilization, inventories, growth, ability to raise capital or investments.

Article 20 Examination of the effect of the dumped or subsidized imports on prices

1. In order to estimate the impact of goods of the dumped or subsidized imports on prices in the Kosovo market, the Ministry examines in particular:

1.1. whether there has been a significant price undercutting by the dumped or subsidized imports as compared with the prices for the like product of the domestic Kosovo industry; or

1.2. whether there has been a significant decline in prices or a prevention of significant price increases which would otherwise have occurred.

Article 21

Cumulative evaluation

1. When the imports to Kosovo of a product from more than one country are at the same time subject to an anti-dumping or anti-subsidy investigation respectively, the effects of such imports may only be evaluated cumulatively, if it is determined by the Ministry that:

1.1. the dumping or subsidy margin for the imports of each country is equal or higher than two percent (2%) *ad valorem* for dumping and equal or higher than one percent (1%) *ad valorem* for subsidy investigations and the volume of imports from each country is not negligible (minimum share on the Kosovo market of 1%); and

1.2. the cumulative evaluation of the effects of the import from each country is appropriate because of the conditions of competition between the imported products themselves and between the like domestic Kosovo products.

Article 22

Examination of the impact of dumped or subsidized imports

1. The examination of the impact of the dumped or subsidized imports on the domestic Kosovo industry shall be evaluated by the Ministry and include an evaluation of all the relevant economic indicators and factors affecting the state of the domestic Kosovo industry, such as:

1.1. actual and potential decline in sales, profits, production, market share, productivity, investment return and capacity utilization;

1.2. actual and potential factors affecting domestic prices;

1.3. actual and potential negative effects on the movement of goods, employment, wages, growth, and ability to increase the capital or investments;

1.4. the magnitude of the actual dumping or subsidy margin.

2. The Ministry evaluates the effects of dumped or subsidized imports in relation to the production and sales of the like product when the available data allow the identification of that product according to the process of manufacturing/production and profit of the domestic Kosovo industry.

3. If such product identification is not possible, then the effects of dumped or subsidized imports shall be evaluated by examining the production of the closest group or range of products which includes the like product for which it is possible to obtain the necessary information and data.

Article 23 **Threat of material injury**

1. The threat of material injury shall be based only on facts and the threat of material injury must be clearly foreseen and imminent.

2. In determining the facts indicating a threat of material injury, the factors mentioned in Article 22 of this law and also the following factors will be considered:

2.1. a significant rate of increase of dumped or subsidized imports, which indicates the likelihood of further substantially increased imports;

2.2. a decline in price level of such imports that would to a significant degree have a future impact on prices (price undercutting, price depression or price oppression) on the Kosovo market and would probably increase industrial user's or consumer's demand for further imports;

2.3. a sufficient freely disposable production capacity of the exporters or an imminent increase in such capacity which would indicate an increase in dumped or subsidized imports in the domestic Kosovo market; account has, however, to be taken of other export markets to absorb any additional exports;

2.4. the production capacity, inventories and other export markets of the product under investigation in the exporting country or country of origin.

3. An examination of these factors must lead to the conclusion that further dumped or subsidized imports are imminent and material injury will clearly occur without protective measures.

Article 24 **Material retardation of the establishment or development of a Kosovo industry**

1. Injury may also be established if a manufacturing/production of the like product does not yet exist to a significant degree in Kosovo. In order to establish such a material retardation of the establishment or development of a Kosovo industry there must already exist clear indications that a manufacturing/production of a like product is about to be established and/or developed in Kosovo in the near future. The material retardation shall be based on facts.

2. It has also to be found that the effect of the dumped or subsidized imports will be delayed in establishment or development of a Kosovo industry materially and substantially retarded or abandoned.

3. An indication for such retardation may be substantial delays in or abandoning of the adoption of decisions or detailed and proven plans on investment, production, costs, work force, commercialization or marketing that would have been taken or put in practice without the dumped or subsidized imports.

Article 25

Causality

1. The Ministry verifies and establishes the existence or non-existence of the causal link between the dumped or subsidized exports and the material injury, threat of material injury or material retardation of the establishment or development of the domestic Kosovo industry. It must be demonstrated that the dumped or subsidized imports are causing this material injury to the domestic Kosovo industry. This shall entail a demonstration that the volume and/or the price levels of the dumped imports concerned are responsible for such material injury. Non-dumped or non-subsidized transactions have to be disregarded in this respect.

2. The Ministry, in addition to the dumped or subsidized exports, considers also other factors which at the same time may injure the domestic Kosovo's industry, in order to ensure that injury caused by these other factors is not attributed to the dumped or subsidized imports.

3. These other factors may be:

3.1. the quantity and price of non-dumped or non-subsidized imports;

3.2. the reduction in demand or changes in patterns of Kosovo consumption;

3.3. restrictive trade practices of, and competition between, domestic Kosovo and foreign manufacturers/producers;

3.4. new technological developments; and

3.5. export performance carried out and a lower productivity of the domestic Kosovo industry in comparison to the exporters concerned.

CHAPTER V THE INVESTIGATION BODY

Article 26 Ministry and Commission

1. The Ministry is the investigation body for investigating dumping, subsidization, injury thereof and Kosovo interest. The Ministry is supported in its investigation and in the evaluation of its results and findings as well as for the implementation of this Law by the Commission.
2. The Commission shall be composed of representatives from the following institutions:
 - 2.1. respective Ministry for Trade and Industry – Chair;
 - 2.2. respective Ministry of Economy and Finance;
 - 2.3. respective Ministry of Agriculture, Forestry and Rural Development;
 - 2.4. respective Ministry of Energy and Mining;
 - 2.5. respective Ministry of Foreign Affairs;
 - 2.6. respective Ministry of Labour and Social Welfare; and
 - 2.7. Kosovo Customs Service.
3. Members of the Commission shall be proposed by the respective Ministries and will be appointed by the Minister of the respective Ministry for Trade and Industry.
4. The Commission shall take decisions by simple majority of votes.

CHAPTER VI THE INVESTIGATION

Article 27 Requirements for application of a complaint

1. The investigation to determine the existence, degree, level and effect of any alleged dumped or subsidized imports, shall be initiated by the Ministry, after consulting the Commission, at a written request by any natural or legal person, or any association not having necessarily legal personality, acting on behalf of the domestic Kosovo industry.

2. In exceptional cases, the Ministry can initiate the investigation on its own initiative after consultation with the Commission.
3. Requirements for application of a complaint by or on behalf of the domestic Kosovo industry and the content of the complaint form shall be defined in a bylaw issued by the Ministry.

Article 28

Decision on initiation of investigation

1. The Ministry, after review and verification of the information provided in the application (complaint), presents those with a report of its appreciation to the Commission for evaluation and consultation. Additional information can be requested from the applicants by the Ministry and/or the Commission before making the decision to initiate the investigation. The Ministry decides on the opening of an investigation after consulting the Commission.
2. When the Ministry makes the decision to open an investigation without written request from or on behalf of the domestic Kosovo industry, then this decision must be based on sufficient evidence, information and data on the dumping or subsidization, material injury and causal relation, in accordance with Chapter II, III and IV of this Law.
3. The request for initiation of an investigation shall be rejected by the Ministry, after consultation of the Commission, when there is insufficient information or data to justify the opening of a proceeding.
4. An investigation shall not be opened against exporting countries whose imports to Kosovo represent a market share of less than one percent (1%), unless and in case of a complaint against several exporting countries, when these countries account together for more than three percent (3%) of domestic Kosovo consumption.
5. The investigation shall only be initiated on the basis of an application if it is determined that:
 - 5.1. a written request has been submitted by the domestic Kosovo industry in accordance with this Law; and
 - 5.2. the level of support for the request is equal to or more than twenty five percent (25 %) of the total production of the like product produced by the domestic Kosovo industry.
6. It is considered that the application has been made by or on behalf of the domestic Kosovo industry only if it is supported by:
 - 6.1. either Kosovo manufacturers/producers whose production constitutes equal or more than fifty percent (50%) of the total production of the like product; or

- 6.2. if opposition expressed to the application of Kosovo producers is less than the production of those manufacturers/producers who support the application.
7. Any application in accordance with the provisions of this Article may be withdrawn before the investigation starts and in this case it will be considered that it was not even submitted.
8. The Ministry decides at the latest one month after the lodging of the complaint of the opening or non-opening of a proceeding.
9. When the Ministry decides not to initiate an investigation, then this fact shall be notified in writing to the applicant. This notification is open to judicial review.
10. The Ministry requires from the Commission its opinion to initiate or not to initiate an investigation concerning dumping or subsidization within two (2) weeks after the lodging of the complaint by the domestic Kosovo industry. When the Ministry or the Commission requires additional information from the applicant, this deadline may be extended up to one (1) month.
11. The Ministry will not initiate the investigation for the imported product if it is found that:
- 11.1. in case of dumping, the dumping margin is less than two percent (2%).
 - 11.2. in case of subsidization the amount of subsidies is less than one percent (1%).

Article 29

Notification on initiation of an investigation

1. When the Ministry makes a decision to initiate an investigation it is obliged to notify this fact to the Commission and shall also inform the interested parties as defined in Article 3 sub-paragraph 1.13 of this Law.
2. The initiation of an investigation shall be published in the Official Gazette.
3. The content of the notice referred to in paragraph 2. of this Article shall be determined in a bylaw.
4. The investigation shall start from the date of publication referred to in paragraph 2. of this Article.

Article 30
Duration of investigations

The Ministry shall close the investigation on allegedly dumped or subsidized imports at the latest one (1) year after its initiation.

Article 31
Public file and the right to information

1. The Ministry establishes for each investigation a public file in accordance with the requirements for protection of confidential information, which may be amended from time to time, including:

1.1. public reports relating to the investigation;

1.2. materials, including questionnaires, the answers to the questionnaires and written information submitted to the Ministry or Commission by any other sources;

1.3. other information compiled or obtained by the Ministry or Commission, including any report on the verification carried out; and

1.4. all other documents that are considered to be eligible for public information.

2. This file shall be made available to interested parties and the public at all stages of the investigation, and in the course of any judicial proceedings.

Article 32
The investigation

1. Following the initiation of the proceeding, the Ministry shall commence an investigation in Kosovo and, where appropriate, in the exporting country or country of origin. Such investigation shall cover both, dumping or subsidization respectively, and the injury thereof, and these shall be investigated simultaneously. In Kosovo, the Kosovo interest may also be investigated.

2. For the purpose of a representative finding, an investigation period shall be selected which:

2.1. in the case of dumping or subsidization shall, normally, cover twelve months ending as close as possible to the initiation date of the proceeding; information relating to a period subsequent to this investigation period shall, normally, not be taken into account;

2.2. in the case of injury shall, normally, cover minimum three (3) years.

3. The Ministry will send out questionnaires to the parties covering dumping or subsidization and the injury thereof. Parties receiving these questionnaires shall be given at least forty five (45) days to reply.

4. The time limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the country of origin and/or export.

5. An extension to the forty five (45)-day period may be granted, due account being taken of the time limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

6. Questionnaires shall be completed in one of the official languages of Kosovo.

7. Opportunities shall, on request, be provided for the importers, exporters and the domestic Kosovo industry and where appropriate, the government of the country of origin and/or export or any other interested party, to meet those parties having adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account by the Ministry in so far as it is subsequently confirmed in writing.

8. The interested parties may, upon written request, inspect all information made available to the Ministry by any party to an investigation which is relevant to the presentation of their cases and is not confidential, and that it is used in the investigation. Such interested parties may respond to such information and their comments shall be taken into consideration wherever they are sufficiently substantiated in the response.

9. The information which is supplied by interested parties and upon which findings may be based shall be examined by the Ministry for its correctness and accuracy as far as possible.

10. Throughout the subsidy investigation, the Ministry shall afford the government of the country of origin and/or export a reasonable opportunity to continue consultations with a view to clarifying the factual situation and arriving at a mutually agreed solution.

Article 33

Hearing

1. At the written request of any interested party, the Ministry must hold a hearing at which all interested parties may present information and arguments. A hearing shall be held at the latest sixty (60) days before the proposed date for the definitive decision.

2. As requested, the Ministry shall provide to the interested parties the opportunity to meet, in order to express opposing views and present opposing arguments.

3. Interested parties who wish to participate in the hearing shall inform the Ministry of the names of representatives and witnesses who will appear at the hearing seven (7) days before the hearing date.

Article 34 Sampling

1. In cases where the number of complainants, exporters or importers, types of product or sales transactions is large, the investigation may be limited to:

1.1. a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection; or

1.2. to the largest representative volume of the production, sales or exports which can reasonably be investigated within the time available.

2. The decision on the selection of parties, types of products or transactions made under this Article shall rest with the Ministry, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within three (3) weeks of initiation of the investigation, to enable a representative sample to be chosen.

3. In cases where the examination has been limited in accordance with this Article, an individual dumping margin or subsidy margin shall be calculated for any exporter or manufacturer/producer not initially selected who submits the necessary information within the time limits provided for in this Law, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.

4. Where the Ministry has decided to take sample and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of non-cooperation shall apply.

Article 35 Non-cooperation, incorrect and misleading information

1. In the event that any of the interested parties, refuses access to, or otherwise does not provide the requested and necessary information or does not respect the time limits

prescribed in this Law or significantly impedes the investigation, the conclusions and findings may be made on the basis of the available facts.

2. When it is found that any interested party has provided incorrect or misleading information, that information shall not be taken into account and the findings may be made on the basis of the available facts.

3. Interested parties should be made aware of the consequences of non-cooperation or the provision of incorrect or misleading information.

4. Failure to give an ePost response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

5. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefore and shall be granted an opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

7. If determinations, including those regarding the dumping margin or subsidy margin, are based on the provisions of paragraph 1. of this Article, including the information supplied in the complaint, it shall, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

8. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favorable to the party than if it had cooperated.

Article 36 Disclosure of Information

1. Interested parties may request disclosure of important information and the essential facts and details and considerations underlying the essential facts and on the basis of which provisional measures have been imposed. The request shall be addressed to the Ministry in writing immediately after the introduction of provisional duties and the disclosure shall be made in writing as soon as possible thereafter.

2. Interested parties may also request a final disclosure of important information the essential facts and details and considerations on the basis of which it is intended to impose definitive measures or the termination of the proceeding. The request shall be addressed to the Ministry in writing and shall be received not later than one (1) month after the imposition of provisional measures. In cases where a provisional measure was not applied, the interested parties shall be given the opportunity to request final disclosure within the time limits specified by the Ministry.

3. Final disclosure shall be made in writing as soon as possible and at least one (1) month before any definitive decision is taken.

4. Representations made after final disclosure shall be taken into consideration only if received by the Ministry within a period set by the Ministry which shall be at least two (2) weeks.

5. After the Ministry finishes the investigation, it shall, after consultation of the Commission, issue a definitive decision, which must be made public, including the reasons that led to that decision, and taking into consideration the protection of confidential data.

6. The definitive decision shall be published in the Official Gazette. The decision shall also be delivered to the interested parties.

Article 37

Verifications

1. The Ministry, when it deems it appropriate may undertake actions for checks, inspections and data verification from all the interested parties, relating to dumping, subsidy, injury and Kosovo interests. It may carry out verification visits to examine the records and to verify data and information supplied.

2. In order to verify the obtained information and to get additional ones, the Ministry, if it deems it necessary, may conduct investigations also in other countries, provided that the enterprise concerned give their consent and the government of the country concerned has been officially notified and raises no objection. The authorities of the exporting country should be notified of the names and addresses of the enterprises to be visited and the dates of visits.

3. The Ministry prepares the report on data verification for each company. This report will be completely at the disposal of the company, whereas a non-confidential version will be filed in public file.

4. The companies concerned will be informed about the nature of the information and the data, which will be verified during the visit. Other requests for information and their verification may be made during the visits.

Article 38
Confidentiality

1. The information and data received from the interested parties shall be used only for the reasons they were requested.
2. Confidential information will not be made known to the public or any other interested party without written permission from the source of this confidential information.
3. The information and data shall be considered confidential when:
 - 3.1. by their very nature, the disclosure of such information or data would have a substantial negative impact or effect on the person who submitted the information or on the person from which the information is obtained; and
 - 3.2. information was obtained on the basis of confidentiality of the parties and if for this confidentiality request solid reasons were shown.
4. Interested parties that have provided confidential information shall also submit a non-confidential summary. In exceptional cases, the parties may indicate in writing the reasons why such a non-confidential summary is not possible.
5. The information and data shall not be considered confidential when the request for confidentiality is not justified. In such a case and when the provider does not approve the disclosure of the information and data in any form, the information may be disregarded.

CHAPTER VII
CONCLUSION OF INVESTIGATION

Article 39
Provisional duties

1. The Ministry may impose provisional duties, if the investigation was initiated pursuant to the provisions of Chapter VI of this Law, and if the imposition of provisional duties will foreseeable prevent further injury to the domestic Kosovo industry and if provisional duties are in the interests of Kosovo.
2. Provisional duties may be taken in the form of additional import duties or a security deposit in cash or bonds, not exceeding the dumping or subsidy margin established.
3. The payment of such a provisional anti-dumping or countervailing duties is the condition for the free circulation of the product under investigation in Kosovo.

4. Provisional duties shall be imposed no earlier than sixty (60) days, but no later than nine (9) months after the initiation of the investigation.

5. Provisional anti-dumping and countervailing duties cannot exceed the dumping or subsidy margin established, and must be less than this margin, if such a lower duty is sufficient to eliminate the injury caused to the domestic Kosovo industry.

6. Provisional duties will normally be applied for a period not exceeding six (6) months. At the request of exporters, the Ministry, after consulting the Commission, may extend the period of application of provisional duties, but not longer than nine (9) months.

Article 40 Undertakings

1. Upon condition that a provisional affirmative determination of dumping or subsidization and injury thereof has been made and protective action is in the interests of Kosovo, the Ministry, after consulting the Commission, may accept satisfactory voluntary undertakings offers under which:

1.1. either for anti-dumping investigations the exporter undertakes to revise its prices or to cease exports at dumped prices and if the Commission is satisfied that the injurious effect of the dumping is thereby eliminated, or

1.2. for anti-subsidy investigations

1.2.1. the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

1.2.2. any exporter undertakes to revise its prices or to cease exports to Kosovo as long as such exports benefit from countervailable subsidies, so that the Commission is satisfied that the injurious effect of the subsidies is thereby eliminated.

2. In such a case and as long as such undertakings are in force, the provisional or definitive duties imposed shall not apply to the relevant imports of the product concerned manufactured/produced by the exporters referred to in the undertakings.

3. Price increases under such undertakings shall not be higher than is necessary to offset the dumping or the amount of countervailable subsidies, and should be less if such increases would be adequate to remove the injury to the domestic Kosovo industry.

4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.

5. Where an undertaking is accepted before definitive measures, the investigation of dumping or subsidization and injury shall normally be completed. In such a case, if a negative determination of dumping, subsidization or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, it may be required that an undertaking be maintained for a reasonable period. In the event that an affirmative determination of dumping, subsidization and injury is made, the undertaking shall continue in consistence with its terms and the provisions of this Law.

6. Any country or exporter from whom undertakings have been accepted is required to provide, periodically, information relevant to the fulfillment of such undertaking, and to permit verification of pertinent information and/or data. Non-compliance with such requirements shall be considered as a breach of the undertaking.

7. In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Ministry, after consulting the Commission, the acceptance of the undertaking shall be withdrawn and the provisional or the definitive duty shall apply.

Article 41 **Termination without measures**

1. The Ministry, after consulting the Commission, shall terminate immediately the investigation without imposing any duties, in the case that an application for measures is withdrawn, unless the Ministry, after consulting the Commission, decides otherwise in the Kosovo interest. The investigation shall also be terminated when the Ministry, after consulting the Commission, decides that protective measures are unnecessary.

2. The investigation shall also be terminated immediately if the Ministry, after consulting the Commission, is convinced that there are insufficient data either of dumping or subsidy and injury that justify the continuation of investigation, or when the Ministry, after consulting the Commission, finds that the dumping or subsidy margins are *de minimis*, as defined in paragraph 11. of Article 28 of this Law, or when the volume of dumped or subsidized imports, actual or potential, is negligible, as provided in paragraph 4. of Article 28 this Law.

Article 42 **Public notice on conclusion of investigations without imposing duties**

The Ministry, after consulting the Commission, is obliged to issue a public notice on the conclusion of the investigation without imposing measures, taking into account the reasons that led to that decision and the protection of confidential information.

CHAPTER VIII

IMPOSING AND COLLECTION OF ANTI-DUMPING AND COUNTERVAILING DUTIES

Article 43

Complying with the rule of the lower duty

1. The Ministry, after considering the facts determining the existence of dumping or subsidization and the resulting injury thereof, and taking into account the interests of Kosovo, and after consulting the Commission, shall decide on the imposition of the definitive anti-dumping and countervailing duties. In cases where provisional duties are in place, the Ministry, after consulting the Commission, imposes definitive measures no later than on the last day of the validity of the provisional measures.
2. Definitive anti-dumping and countervailing duties cannot exceed the dumping or subsidy margin established, and must be less than this margin, if such a lower duty is sufficient to eliminate the injury caused to the domestic Kosovo industry. No measures shall be imposed if the dumping has been ceased to exist or the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved.
3. In examining whether a lower duty is sufficient the Ministry will take in particular into account the level of price undercutting by the dumped or subsidized imports and/or the reasonable profit level necessary for the domestic Kosovo industry for its sales on the Kosovo market.

Article 44

Non-discrimination and individualization

1. An anti-dumping or countervailing duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis, on all imports of the product under investigation from all sources found to dump or to benefit from countervailable subsidies and thus causing injury, except as to imports from those sources from which undertakings under the terms of this Law have been accepted.
2. The sub-legal act imposing the duty shall specify the duty for each exporter or supplier, or in exceptional circumstances, if such individualization is impracticable, the supplying exporting country concerned.
3. When the investigation was limited to an examination of a sample of exporters, any anti-dumping or countervailing duty applied to imports from exporters or producers which have made themselves known in but were not included in the examination of the sample shall not exceed the weighted average amount of the dumping margins or countervailable subsidies established for the parties in the sample. For the purpose of this paragraph, any zero and *de minimis* margins or amounts of dumping or countervailable

subsidies and margins or amounts of dumping or countervailable subsidies established for non-cooperating companies shall be disregarded.

4. Individual duties shall be applied to imports from any exporter or producer for which an individual dumping margin or amount of subsidization has been calculated.

5. No product may be at the same time subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from subsidization.

Article 45 **Retroactive duties**

1. Provisional duties and definitive anti-dumping and countervailing duties normally apply only to products that have been released for free circulation in Kosovo, after the time when the provisional or definitive decisions have been made.

2. Where a provisional duty has been applied and the facts as finally established show the existence of dumping or subsidies respectively and injury there from, the Ministry, after consulting the Commission, shall decide, irrespective of whether a definitive anti-dumping or countervailing duty is to be imposed, what proportion of the provisional duty is to be definitively collected.

3. In cases where definitive findings show only threat of injury or retardation, any provisional amounts shall be released and final duties can only be imposed from the date on which a final determination of threat of injury or retardation is made.

4. If the definitive anti-dumping or countervailing duty is higher than the provisional duty, the difference shall not be collected retroactively. If the definitive duty is lower than the provisional duty, the difference between both duties shall be released. Where a final determination is negative (no dumping, subsidization or injury or Kosovo interest does not call for action), the provisional duty shall not be confirmed and it should be released in total.

5. A definitive anti-dumping or countervailing duty may be levied on products which were entered into Kosovo for free circulation not more than ninety (90) days prior to the date of the application of provisional measures but not prior to the initiation of the investigation, provided that the imports have been registered, the importers concerned have been given an opportunity to comment, and:

5.1. there are critical circumstances where for the dumped or subsidized product in question injury which is difficult to repair is caused by massive imports in a relatively short period of time of a product benefiting from dumping or countervailable subsidies under the terms of this Law; and

5.2. it is deemed necessary, in order to preclude the recurrence of injury, to assess anti-dumping or countervailing duties retroactively on those imports; or

5.3. there is, for the product under investigation, a history of dumping or subsidization over an extended period of time, or the importer was aware of, or should have been aware of the dumping or subsidization as regards the extent of the dumping or subsidization and the injury alleged or found; or

5.4. in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping or countervailing duty to be applied.

6. In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation not more than ninety (90) days before the application of provisional measures, provided that the imports have been registered and that any such retroactive assessment shall not apply to imports entered before the breach or withdrawal of the undertaking.

CHAPTER IX DURATION, REVIEWS, REIMBURSEMENT, SUSPENSION, CIRCUMVENTION

Article 46 Duration

1. Anti-dumping and countervailing duties remain in force only as long as, and to the extent that it is necessary to neutralize and counteract the dumping or subsidy which caused material injury to the domestic Kosovo industry and as they are in the Kosovo interest.

2. Any final anti-dumping or countervailing duty shall expire after a maximum of five (5) years from its imposition or five (5) years after the date of the last full review concerning dumping or subsidization, injury and Kosovo interests, except in cases when a review (expiry review) concludes that the expiry or termination of these duties may lead to continuation or recurrence of dumping or subsidies and injury.

Article 47 Expiry Review

1. The expiry review starts if there is sufficient evidence that the expiry or termination of the duties may lead to a continuation or recurrence of dumping or subsidies. This is

shown by the information and data on the continuation of dumping or subsidies, or information and data that the removal of the injury is caused solely or partly only due to the existence of the duties submitted to the Ministry by any interested party.

2. The Ministry, after consulting the Commission, may initiate a review procedure of the imposed duties on its own initiative or at the written request by or on behalf of domestic Kosovo industry, and the duty remains in effect until the final decision on this review is made. The duration of the review proceeding shall not exceed one (1) year.

3. The request has to be made to the Ministry and contain sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping or subsidization and injury thereof.

4. During the investigations in accordance with paragraph 1. of this Article, the Ministry shall allow importers, exporters, representatives of the exporting country and domestic Kosovo industry to supplement, object or comment on the issues listed in the review request, taking into account all the documented information and the fact that the expiration of duties may lead to the likelihood of continuation or recurrence of dumping or subsidies and the injury.

5. The Ministry, no later than four (4) months before the impending expiry of the measures, and after consulting the Commission, publishes in the Official Gazette a notice of the imminent removal of the anti-dumping or countervailing duties in order to allow the domestic Kosovo industry to lodge a review request.

6. A notice announcing the expiry of measures shall be published in the Official Gazette.

7. Measures imposed on the basis of this expiry proceeding can last for up to five (5) years.

Article 48 **Interim review**

1. The need for the continued imposition of measures may also be reviewed, where warranted. In this respect, the Ministry, after consulting the Commission, may initiate an interim review procedure on its own initiative at any time. An interim review may also be requested by or on behalf of domestic Kosovo industry or any other interested party after a reasonable period of time has passed, and at least one (1) year after the imposition of the definitive anti-dumping or countervailing measures.

2. The request has to be addressed to the Ministry and contain sufficient evidence that the continued imposition of the measures is no longer necessary to offset the dumping or subsidization and/or that the injury would be unlikely to continue or recur if the measures were removed or varied or that the existing measures are not or are no longer sufficient to counteract the dumping or subsidization and the injury therefrom.

3. If the Ministry finds during the review of anti-dumping or countervailing measures, after consulting the Commission, that measures are no longer required, they shall be immediately removed. If the Ministry finds during the review of anti-dumping or countervailing measures, after consulting the Commission, that the measures are not any longer sufficient, they shall be adapted in accordance with the provisions of this Law.

4. Measures imposed on the basis of this interim review proceeding can last for up to five (5) years provided the interim review covered both dumping/subsidization and injury as well as the Kosovo interest. If this is not the case they expire at the expiry date of the original measures.

Article 49

Review of the request of new exporters/importers

1. An exporters whose products are subject to the definitive anti-dumping or countervailing duties and which was not individually investigated during the investigation procedure, for reasons other than a refusal to cooperate, can request a review in order to get an individual examination. The request has to be addressed to the Ministry, be in writing and be fully documented as far as its normal value or the amount of countervailable subsidy and its actual or future export prices are concerned. The domestic Kosovo industry must be given an opportunity to comment on this request.

2. For procedures of investigation according to paragraph 1. of this Article shall apply the relevant provisions of this Law.

Article 50

Absorption review after the entry into force of measure

1. An anti-absorption review may be initiated by the Ministry, after consulting the Commission, if any interested party submits, normally not before six (6) months after the entry into force of the measures, sufficient evidence that, after the original investigation period and prior to or following the imposition of measures, export prices have substantially decreased or that there has been no movement, or insufficient movement of resale prices or subsequent selling prices of the imported product in Kosovo. The Ministry shall examine during the investigation whether the measures in force had the effects on the abovementioned prices or whether there were other factors which led to this situation.

2. If the investigation undertaken by the Ministry proves the allegations to be correct, the existing anti-dumping or countervailing duties respectively may be increased by the Ministry, after consulting the Commission, in order to achieve the price increase required to remove injury to the domestic Kosovo industry; however, the increased duty level shall not exceed the dumping margin or the amount of the countervailable subsidies which may be recalculated on the basis of the new facts.

3. For procedures of investigation according to this Article shall apply the relevant provisions of this Law.

Article 51 Refunding - Reimbursement

1. The importer may request refunding of duties collected from the competent bodies if the Ministry, after consulting the Commission, determines that the dumping margin or the subsidy margin the basis of which the duties have been paid, has been eliminated or reduced to a level which is lower than the duty in force.

2. The importer shall submit, within sixty (60) days after the date on which the duty requested to be refunded has been levied to the Ministry a duly documented written request for refunding of the duty amount that was paid.

3. The request must contain documented information for the claimed amount of refunding of the antidumping or countervailing duty for the period, and the completed customs documents relating to the calculation of payment of such an amount.

4. The Ministry reviews the request and investigates the case. If the exporter or the manufacturer/producer fails to provide the evidences within the sixty (60) days deadline, the application will be rejected by the Ministry, after consulting the Commission.

5. Based on refunding application, the Ministry, after consulting the Commission, during the investigations, will decide whether and to which amount the refunding will be made.

6. Refunding of duties will normally take place within twelve (12) months and in any case not later than eighteen (18) months from the date of the refunding request. Any refunding, based on proper data from the importer of the product, which is the subject of antidumping or countervailing duties, shall be done within ninety (90) days from the date of decision on refunding.

Article 52 Suspension

1. Measures imposed pursuant to this Law, may be suspended in the Kosovo interest by a decision of the Ministry, after consulting the Commission, for a period of no longer than twelve (12) months. The suspension may be extended for a further period, not exceeding six (6) months, if the Ministry, after consulting the Commission, so decides on the basis of sufficient evidence.

2. Measures can only be suspended on the basis of a written and fully documented request addressed to the Ministry by an interested party giving evidence of the factors and conditions enumerated in paragraph 3. of this Article.

3. Measures may only be suspended where Kosovo market conditions have temporarily changed to an extent that injury to the domestic Kosovo industry would be unlikely to resume as a result of the suspension, and provided that the domestic Kosovo industry has been given an opportunity to comment and these comments have been taken into account.

4. Measures may, at any time and after consultation of the interested parties, be reinstated by the Ministry, after consulting the Commission, if the reason for suspension is no longer applicable.

Article 53 Circumvention

1. On the basis of a written request by an interested party to the Ministry anti-dumping or countervailing duties, as set in accordance with this Law, may be extended by the Ministry, after consulting the Commission, to like products or some parts of them, which are imported from a third country to Kosovo, when circumvention of the measures in force is taking place

2. Circumvention shall be defined as a change in the pattern of trade between third countries and Kosovo or between individual companies in the country subject to measures and Kosovo, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duties.

3. The practice, process or work referred to in paragraph 2. of this Article includes, *inter alia*, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics; the consignment of the product subject to measures via third countries; and the reorganization by exporters or producers of their patterns and channels of sales in the country subject to measures. The modification has to be done in order to eventually have the products exported to Kosovo through manufacturers/producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers/producers.

CHAPTER X KOSOVO INTEREST

Article 54 Kosovo interests

1. A determination as to whether the Kosovo interest calls for an anti-dumping or countervailing intervention should be done by the Ministry, after consulting the Commission, and be based on an appraisal of all the various economic interests of all interested parties taken as a whole; a determination pursuant to this Article shall be made only where all parties have been given the opportunity to make their views known. In such an examination, the need to eliminate the trade-distorting effects of injurious dumping or subsidization and to restore effective and fair competition to the benefit of the consumers shall be given special consideration.
2. Measures, as determined on the basis of dumping or subsidization and injury thereof found, may not be applied where the Ministry, after consulting the Commission, shall clearly conclude that it is not in the Kosovo interest to apply or implement such measures.
3. The domestic Kosovo industry, importers and their representative associations, representative users and representative consumer organizations should provide information in this respect.
4. The Ministry shall examine the information which is properly submitted and the extent to which it is representative. Information should only be taken into account where it is supported by actual documented evidence.

CHAPTER XI FINAL PROVISIONS

Article 55 Judicial review of definitive decisions

All definitive decisions taken in accordance with this law can be appealed to the Basic Court for Administrative Issues of the Republic of Kosovo.

Article 56 Implementing provision

For the purposes of implementing this Law, the Ministry shall issue sub-legal acts within six months (6) of the entry into force of this Law.

Article 57
Repealing provision

With the entry into force of this Law, the Law no. 03/L-097 on Anti-dumping and Countervailing Measures will be repealed

Article 58
Entry into force

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 04/L-240
06 May 2014

President of the Assembly of the Republic of Kosovo

Jakup Krasniqi