

**LEGISLATION AND ITS CONTRIBUTION TO LOCAL PRODUCERS
IN REPUBLIC OF KOSOVO****Mr.sc. Alush Kryeziu, PhDc.**

MTI Department of Trade – Republic of Kosova

Email: alush.kryeziu@rskgov.net

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Abstract

In the Republic of Kosovo, producers are protected from unfair foreign trade threats through the legislation on safeguard measures of Kosovo industries. In this regard, two laws have been approved that aim to protect Kosovo industry from unfair competition. These laws are: the law on anti-dumping and countervailing measures, and the law on safeguard measures on imports. So far, there have been three cases when Kosovo industries of chicken meat, and construction goods have been protected by these laws.

Keywords: Legislation, local producers, Republic of Kosovo, goods, dumping, anti-dumping, countervailing measures.

Introduction

The first country who began to use safeguard measures for the protection of the manufacturing industry were the United States, who protected its manufacturers with special measures from unfair businesses that were operating at that time with European countries namely with Great Britain.

The safeguards for manufacturing industries are foreseen even with the World Trade Organization (WTO), this is provided in the Article XVI of the GATT on subsidy and countervailing measures, and Article VI, paragraph 1-2, 4-6 GATT on Anti-dumping Measures.

The producers in the Republic of Kosovo are protected by the law on safeguards from Import. Until now two laws are drafted and approved by the Kosovo Assembly whose goal is protect the manufacturing industry which is endangered by the unfair competition with imports of different products which in the domestic market are being sold below the nominal value compared to the country of origin:

1. The law no. 03/L-097 dated 01.04.2012 on Anti-dumping and countervailing measures and
2. The law no. 04/L-047 dated 31.08.2012 on Safeguards measures on Import.

1. General concepts**Anti-dumping measures**

The activity of anti-dumping, countervailing measures and safeguards safeguard measures represent a large part of the mitigating measures on import undertaken by the developed countries and under development countries as well. However the main parties involved in antidumping proceedings, importers and domestic producers of the product under investigation, often lacked knowledge about the procedures that include those actions. The effects of this lack of knowledge are in most cases, weak positions of procedures and significant financial losses. Such fact of non-recognition of procedures for safeguards to domestic producers exists in Kosovo as well. The rules of the World Trade Organization (WTO) allow states to take necessary measures to protect their domestic industries from “fair” practices of trade from foreign exporters. Dumping, subsidy measures and imports with large volume are considered unfair trade practices. In Kosovo dumping as unfair trade practice is regulated by Law Nr.03/L-097 on

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Anti-dumping measures and countervailing measures. This law was adopted by the Assembly of the Republic of Kosovo on 10 April 2010. Article VI of the GATT provides that an imported product can cause dumping, when an exporter sells the product in the foreign market with lower price than the real value (normal) of the product itself. In general this practice occurs when the price at which the exporter imports the goods, is lower than that offered in his place respectively in the country of origin. This definition of dumping is also given in Article 1 of the Law on Anti-dumping measures and countervailing measures No. 03/L-097 which creates the legal basis for the imposition of anti-dumping measures and countervailing measures. In order to impose measures against imported product which is considered that in Kosovo market is being sold under its real price, these elements must be taken into account:

- The normal value of the product in the country of origin, price in the domestic market and the export price.
- The normal value is benefit-cost of the product manufactured in the country of origin.
- The domestic market price is the price which the imported product is sold in the domestic market.
- The export price is the difference between the domestic price and the price in the foreign market which is commonly referred to as "dumping margins"

The formula for calculating the dumping margin percentage is:

- Dumping Percentage = $\frac{(\text{normal value} - \text{export price}) \cdot 100}{\text{export price}}$
- Anti-dumping measures and countervailing measures must be imposed only after the investigation procedures have been carried by the Import Measures Assessment Commission (IMAC) of section 16, paragraph 1 of Law no. 03/L-097. In order to start the investigation of suspected product, as an interpretation mean we use the Clause Ad GATT 1994 Article VI of Annex Section 1 Article 2 which states: The value of built product which covers all costs (production costs plus administrative costs, cost of sales plus a profit margins.)

1.2. The Damage and the threat of damage

What makes the dumping "unfair" is the "damage" that causes or threatens to cause to the domestic industry in the country of the importer. The "damage" exists when: there is a significant increase in the volume of exports and there is actual and potential negative impact on sales, profits, market share, employment, wages, possibility to increase capital or investments etc. by the domestic producers. The "threat of injury" exists in a situation when the dumping causing injury can be clearly and visibly predicted.

1.3. Investigation of safeguards on imports

Investigations for Anti-dumping, countervailing measures and safeguards on imports normally start on the basis of a written application by or on behalf of the domestic industry. However the competent authorities to undertake the investigations on protective measures on imports could also start proceedings without receiving such an application. In both cases, the necessary condition for the beginning is the existence of a sufficient evidence for damage and a causal link between the two. Application must contain information that reasonably is available from the applicant, such as: The identity of the applicant and the volume and value of domestic production. A description of the reviewed product and the name of the country of origin/export, names of exporters/importers/ foreign or known producers, normal values and export prices of the product under review and the alleged volume of imports of the product and the effect of such imports in the price of that product in the domestic market and domestic industry. The applicant must produce not less than 25% of domestic production or to get the support of other manufacturers who jointly produce the product in question over 50%.

1.4. Investigation procedure

The procedure for beginning of investigation on safeguards measures can be done in two ways:

- Complaints from the manufacturing business entities and
- Self-Initiation by the governmental institutions.

Most of the cases of investigations on safeguard measures are initiated through the submission of the request submitted by Kosovar manufacturers or manufacturing industries who complain of the dumped imports on the domestic market, but in rare and special cases initiation of the investigation can be undertaken by the governmental responsible authorities without prior request from the manufacturing entities. Although there are differences from one country to another in the procedures for the investigations of anti-dumping, countervailing measures and safeguards on imports, proceedings usually involve three main stages which are placed on time and those are:

- Collection of information (e.g. questionnaires, meetings with stakeholders, investigations in the country and abroad),
- Assessment of information (e.g. determinations for dumping, various subsidies and causality between the two),
- Imposition of interim measures which may be customs tax or the measure in price or termination of proceedings without taking any measures.

In the investigation of protective measure, the importers and exporters of the product are required to submit the information required by the authorities, to allow the authorities to verify the accuracy of the information provided, and to obtain further details through investigations in the country by providing all the necessary authorities and the required documents during these visits.

In a investigation on safeguard on imports, Importers (IM) and Exporters (EX) have the right to:

- To be given at least 30 days time to respond to the questionnaires sent by the authorities of (EX),
- To request an extension until 30 days to respond in the questionnaires (EX)
- To demand protection of their confidential information,
- To be offered verbal information to the authorities,
- To be informed of the essential facts that came to the final decision by the authorities at the end of the investigation on safeguard measures.

Investigation of Safeguard on imports is done by the Import Measures Assessment Committee (IMAC) which is inter-ministerial committee composed of six members from these institutions Ministry of Trade and Industry, Ministry of Finance, Ministry of Economic Development, Ministry of Foreign Affairs, Ministry of Agriculture, Forestry and Rural Development and Kosovo Customs. Anti-dumping measures, countervailing measures and safeguard measures on imports are imposed only after carrying out the investigation which was done by IMAC.

In cases where there is complexity during the investigations we can engage an expert from certain areas to assist in the investigation of the case for protection of domestic production. After completion of investigation IMAC recommends respectively proposes to take measures to protect domestic production. Proposed measures can be: provisional safeguard measures and final measures.

1.5. Provisional safeguard measures

If the preliminary determinations of authorities on the existence of damage or threat of damage are affirmative, provisional measures may apply in order to prevent damage caused during the course of the investigation. The imposed dumping measures can not be higher than the dumping margin (the difference in between normal value and export price). Provisional measures may be terminated if there is voluntary compliance amongst parties

involved in the investigation. If there is no change when taking temporary measures IMAC proposes permanent measures for the product under investigation. Safeguard measures remain in force for so long and with the same necessary effect to neutralize the dumping or subsidy that has caused or threatens to cause damage to the industry of a country (Republic of Kosovo). However, safeguards measures may be extended for 4 (four) years from the date of the decision taken, but can not last for more than 8 (eight) years.

1.6. Public Notice for safeguard measures and conclusion of investigations

After the closure of the investigation the announcement on investigation results will be made in the official newspaper on:

- Imposition of provisional measures or
- Permanent one

However, these measures can be reviewed with the initiative of the authorities itself or by the request of any interested party, which shall provide information based on the need for revision. However, the review may be sought only after a reasonable period of time after the imposition of final customs tax.

1.7. Legal review

All administrative actions that are related to the final conclusions on safeguard measure investigations, and in the revision of these findings can be reviewed by the relevant legal courts, arbitrary or administrative of the importing country. Under WTO rules, these courts and legal procedures of such reviews should be independent from the authorities responsible for carrying out the proceedings.

Conclusion

With the laws of safeguards on imports it is regulated the commercial activity that can be practiced by local producers in the Republic of Kosovo registered by the relevant law for the conduction of commercial activities. With the entry into force of these laws there will be positive effects in the field of protection of Kosovar producers from the unfair trade area. These laws are of special importance because after their approval the legal gaps that has been lacking so far in this field of trade are fulfilled. The laws in question, enable the protection of local producers whenever they are damaged or threatened to be damaged by the import of products at lower prices than their normal value in the country of origin, or in the case when we have uncontrolled imports, large quantities of foreign products. The implementation of this legislation will have impact in the protection of local products, enhancing the competitiveness of local producers and market regulation. Legislation approved in the field of protection of local producers is fully harmonized with the one from the European Union. Approval and implementation of these laws has its impact in practice in identifying and eliminating informal economy, preventing the market from counterfeit products which seriously harm consumers in particular and economic development in general, in the Republic of Kosovo. In compliance with the legislation on safeguard measures on imports, three cases that caused damage or threatened to damage manufacturing industry in Kosovo have been reviewed. The first case deals with the imposition of protective measures dated on 12.01.2012, which is protected poultry industry. The second case is the imposition of safeguard measures on imports of cement dated 11.06.2012 and the third case is the protection of building materials respectively bricks type "Siporex" imported from the Republic of Serbia imposed on 12.09.2012.

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