

## **Rights and obligations of interested parties in the framework of anti-dumping investigation**

1. According to Article 4 of the Law of Ukraine "On the Protection of National Product Producers from Dumping Imports" (hereinafter - the Law): *"The conduct of anti-dumping investigations in accordance with this Law shall be carried out in the official language of Ukraine."*

*Information, written evidence and other information submitted to the Ministry, the central executive body that implements the state customs policy, or the Commission in accordance with this Law, are taken into account by them in the anti-dumping investigation process, provided that they are presented in the official language of Ukraine."*

Considering the above, all materials during the investigation must be provided to the Ministry of Economy in Ukrainian or accompanied by a translation into Ukrainian. In case of non-fulfillment of the stated requirement of the Law, the materials provided by the interested party may not be taken into account during the investigation.

2. Pursuant to Article 6 of the Law *"The time limits within which all actions are taken in accordance with this Law are established by this Law or determined by the Commission or the Ministry. The right to take actions is lost after the expiration of the specified time limits. Documents submitted after the expiration of these time limits remain without The Commission or the Ministry may make a decision to extend or renew the terms if there are sufficient grounds for this."*

*"... the last day of the term expires at the end of the working day at the Ministry. ... the term is not considered missed if the documents are submitted to the Ministry before its end ... and registered in the prescribed manner."*

In accordance with the above, all actions by the interested party must be carried out within the time limit established by the Law, the Interdepartmental Commission on International Trade (hereinafter - the Commission) and the Ministry of Economy.

If the interested party provides information or performs any actions in violation of the established period, such actions and information may not be taken into account during the investigation.

At the same time, the interested party, if there are sufficient reasons, can apply to the Ministry of Economy with a request to extend/renew the terms of providing information or taking actions. In his appeal, the interested party is obliged to provide reasonable evidence of the need for such an extension/renewal. The decision to extend or renew the terms is taken by the Ministry of Economy, taking into account the validity of the appeal of the interested party and taking into account the time frame of the investigation.

We draw the attention of interested parties that the deadline for providing information is not considered missed if the documents are submitted to the Ministry of Economy and registered in the established manner before its expiration. For incoming correspondence, we recommend contacting the contacts indicated in the "Contacts" section of the website of the Ministry of Economy: [www.me.gov.ua](http://www.me.gov.ua).

3. According to part nine of Article 13 of the Law "*...Information and evidence provided to the Ministry by one of the interested parties during the anti-dumping investigation shall be sent by this interested party to all other interested parties. In the event that the information and evidence are not sent to the Ministry or to the interested parties or if this information and evidence cannot be verified, such information and evidence shall not be taken into account by the Ministry in the anti-dumping investigation process.*"

In accordance with part six of Article 33 of the Law "*Information, documents and comments provided to the Ministry by one of the interested parties in the course of the investigation conducted in accordance with this Law shall be provided by this interested party to all other interested parties. In the event that the specified information, documents and comments are not provided to other interested parties by the party submitting them to the Ministry, such information, documents and comments are not taken into account in the investigation process.*"

For the purpose of transparency of the investigation, the information provided to the Ministry of Economy (its non-confidential version) must be sent to all interested parties of the investigation in compliance with the requirements of the Law. If such information is not sent to all interested parties of the investigation, the Ministry of Economy has the right not to take it into account.

Taking into account the above and in accordance with the first part of Article 6 of the Law, we recommend sending the information provided to the Ministry of Economy to all interested parties of the investigation within five days from the date of its sending to the Ministry of Economy (or receipt of this letter).

For the purpose of prompt information, we recommend creating one electronic message for sending information, which will simultaneously indicate the e-mail addresses of the Ministry of Economy (general address [meconomy@me.gov.ua](mailto:meconomy@me.gov.ua) for official registration and the employee of the Ministry of Economy responsible for conducting the investigation), as well as the e-mail addresses of all interested parties parties

Receipt of such notification by the employee of the Ministry of Economy responsible for conducting the investigation will be considered confirmation of the distribution by the interested party of information and evidence to all other interested parties. At the same time, the interested party sending such a message is responsible for the correct spelling/use of the e-mail addresses of other interested parties (listed in Appendix 1).

Also, we ask all interested parties to send ALL CONFIDENTIAL MATERIALS addressed to the Ministry of Economy, both by postal means to the address of the Ministry of Economy, and MANDATORY in electronic form to the individual email address of the employee of the Ministry of Economy responsible for conducting the investigation.

Along with this, in order to prevent possible manipulation by interested parties regarding the fact of receiving the information that was sent to them, we recommend that you keep the confirmation of sending the information to other interested parties throughout the entire period of the investigation in order to be able to confirm the fact of sending the information, if necessary.

4. In accordance with the first part of Article 32 of the Law "*Information that is of a confidential nature (due to the fact that its disclosure provides significant advantages to a competitor or will have significant negative consequences in the future for the person who transferred the information or for the*

*person who it received, etc.), as well as information that was provided on a confidential basis by interested parties in the anti-dumping investigation process, is considered confidential by the Ministry, if the parties provided sufficient evidence for this."*

Considering the above, in case the interested party believes that the information submitted to the Ministry of Economy is of a confidential nature, the interested party must prepare and send to the Ministry of Economy two versions of the specified information: confidential and non-confidential.

Please note that confidential information may not be disclosed without the written permission of the interested party that provided it, except for cases provided for by the current legislation of Ukraine. In this regard, the interested party must clearly indicate which information is confidential for this purpose, each sheet (in the upper right corner) of the confidential version of the submitted information (including attachments) must be marked "CONFIDENTIAL".

When an interested party submits confidential information without the "CONFIDENTIAL" stamp, the Ministry of Economy may consider it non-confidential.

The Ministry of Economy has the right to independently determine the validity of the requirement regarding the confidential regime of information. The Ministry of Economy has the right not to take into account the information if it considers that the requirement regarding the confidential regime of the information is unreasonable, and the person who transferred the information does not give permission for its disclosure.

5. In accordance with the second part of Article 32 of the Law *"Interested parties who transmit confidential information must accompany it with a non-confidential summary. This summary must be so detailed that the essence of the confidentially transmitted information is clear. If the interested parties cannot compile a non-confidential summary from the confidential information, the said parties must state the reasons for which the said summary cannot be submitted."*

In the event that the interested party believes that the information it provides is of a confidential nature, it must send a non-confidential summary together with the confidential version of the information, which should be sufficient to understand the essence of the confidential information provided.

If the interested party is unable to convert the confidential version into a non-confidential summary, he must explain the reasons why he cannot do so.

The non-confidential version of the submitted information must contain all the non-confidential information provided in the confidential version, as well as information that should be sufficient to understand the essence of the confidential information (examples of preparing a non-confidential summary are attached). In exceptional cases, when confidential information cannot be disclosed in a non-confidential form, the reasons why this cannot be done must be provided. Otherwise, the Ministry of Economy may not take into account the specified information.

6. Part three of Article 32 of the Law stipulates that *"If the Ministry considers that the requirement for the confidential treatment of information is unreasonable, and the person who transferred the information does not want it to be disclosed or does not give permission for its disclosure in general terms or in the form of a summary, such information may not be taken into account, except in the case when, using appropriate sources, it is possible to convincingly prove that this information is reliable."*

In accordance with the specified provisions of the Law, the Ministry of Economy has the right to independently determine the validity of the requirement regarding the confidential regime of information. At the same time, the Ministry of Economy has the right not to take into account the information if it considers that the requirement regarding the confidential treatment of the information is unreasonable, and the person who transferred the information does not want its disclosure or does not give permission for its disclosure.

7. In accordance with the eighth part of Article 13 of the Law *"Applicants and interested parties who have notified the Ministry of their interest in accordance with the twelfth part of Article 12 of this Law, as well as the competent authorities of the exporting country, may, upon written request, familiarize themselves with all the information provided by the interested party, under with the exception of official documents of the Ministry and the Commission, if this information:*

- 1) concerns the protection of their interests;*
- 2) is not confidential in accordance with Article 32 of this Law;*
- 3) used in an anti-dumping investigation".*

According to the above, each interested party in the course of the investigation has the right to apply in writing to the Ministry of Economy with a request to get acquainted with the information provided by another interested party. In the event that such a request meets the requirements of the Law (concerns the protection of the rights of the interested party, the information is not confidential and is used for the purposes of the investigation), the Ministry of Economy informs the interested party about the possibility of such a review within a reasonable time.

8. According to the seventh part of Article 13 of the Law *"Interested parties who have notified the Ministry of their interest in accordance with the twelfth part of Article 12 of this Law shall, at their request, be given the opportunity to hold consultations with the party that filed the relevant complaint or has opposing interests."*

Given the above, any interested party may apply to the Ministry of Economy with a request to hold consultations with the party that filed the relevant complaint or has opposing interests. In the course of such consultations, interested parties have the right to present their point of view and provide relevant comments regarding the conduct of the investigation.

The interested party that participated in the consultations shall submit a non-confidential summary of their presentations and statements for inclusion in the non-confidential part of the investigation file. Participation in consultations is the right of interested parties, and failure to attend consultations does not entail negative consequences.

9. According to part nine of Article 13 of the Law, *"Information provided by interested parties and based on which a positive or negative conclusion is made regarding the existence of dumping and injury is subject to verification by the Ministry, except for the circumstances specified in Article 31 of this Law."*

Part one of Article 31 of the Law stipulates *"In the event that the interested party refuses access to the necessary information or does not submit it within the time limits established by this Law, or obstructs the anti-dumping investigation, the Ministry may, on the basis of the information it possesses, make appropriate positive or negative preliminary or final conclusions on the necessity of urgent application of anti-dumping measures".*

According to the sixth part of Article 31 of the Law *"If the interested party completely or partially evades cooperation with the Ministry and in this connection does not provide information related to the anti-dumping investigation, the result of the anti-dumping investigation for this party may be less favorable than in the event that the party does not shy away from cooperation"*.

Taking into account the above, the information submitted to the Ministry of Economy and related to dumping and injury should not be based on unspoken statements or assumptions, but should be sufficiently substantiated and based on facts and evidence that are provided to the Ministry of Economy together with the information.

In case of providing unconfirmed information or establishing that the provided information is unreliable or incomplete, the Ministry of Economy has the right not to take such information into account during the investigation.

If the interested party refuses to cooperate with the investigation, he should be aware that the results of the investigation may have less favorable consequences for him than if he cooperated.

**The above legal requirements are mandatory for all interested parties in this investigation.**

10. According to the first part of Article 30 of the Law *"If the number of applicants, exporters or importers (hereinafter - the parties), types of goods or relevant operations is significant, the Ministry in the anti-dumping investigation process may limit itself to:*

*1) by a moderate number of parties, types of goods or operations, using samples statistically justified on the basis of information currently available to the Ministry;*

*2) or the largest volumes of production, sale or export deliveries of goods, which may, if necessary, be investigated within the time limits specified by this Law or established by the Commission."*

## ADVISOR ON THE PREPARATION OF A NON-CONFIDENTIAL RESUME

When preparing a non-confidential summary of confidential information, it is necessary to keep in mind that all interested parties will have access to it. A non-confidential summary must be sufficiently detailed to permit a reasonable understanding of the substance of the confidential information. The following examples are indicative. The Ministry is not responsible for possible disclosure of confidential information as a result of using these recommendations.

### Examples of preparing a non-confidential presentation of confidential information

- If the information concerns several numerical values that collectively form a dynamic series or that have a structural relationship, it is possible to use indexical/relative indicators.

#### Example of confidential information:

First annual period	Second annual period	Third annual period
[20,000]	[30,000]	[40,000]

#### A non-confidential statement may have the following form:

First annual period	Second annual period	Third annual period
=100% (or =0%)	150% (or +50%)	200% (or +100%)

- If the information concerns a single number, its non-confidential presentation can be made by changing the number by a random percentage in a specified interval.

#### Example of confidential information:

"My production costs are [\$300] per ton"

#### A non-confidential statement may be as follows:

"My production costs are \$328\* per ton" (with a footnote explaining that the actual numbers have been altered within  $\pm 10\%$  to preserve confidentiality).

- If the confidential information refers to the text, its non-confidential presentation can be carried out by logically describing its confidential content, for example, indicating their functions, status, etc.

#### Example of confidential information:

["Trade company "TRADE"] reported that import prices decreased by 20%."

#### A non-confidential statement may be as follows:

"One of my customers reported that import prices have dropped by 20%."

- If it is not possible to make a non-confidential summary, it is necessary to state the reasons for which the specified summary cannot be submitted.