

**NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLE 32.6 OF THE AGREEMENT**

**KYRGYZ REPUBLIC**

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This Law shall establish the main notions and principles of the legislation on subsidies and countervailing measures, as well as the order of investigation for establishing countervailable subsidies, and conditions for the introduction and annulment of countervailing measures.

**CHAPTER 1. GENERAL**

**Article 1. Terms and Definitions**

This Law shall employ the following notions:

“Injury” shall mean material [financial] losses, caused as a result of importation of subsidized goods to domestic producers of similar goods, or a significant retardation in the organization and expansion of production of similar goods in the Kyrgyz Republic;

“Threat of injury” shall mean a real possibility to cause losses to domestic producers of goods in future due to the supplies of similar subsidized goods subject to countervailing measures.

“Provisional measures” shall mean preliminary countervailing measures applied in the form of countervailing provisional duties, pledge liability or deposit of a sum of money;

“Interested parties” shall mean suppliers of a product subject to investigation, either a trade or industrial association whose majority of members shall be suppliers of such a product, as well as the government of exporting country, the government of the Kyrgyz Republic, a producer of the like or directly competitive product in the Kyrgyz Republic, either a trade or industrial association whose majority of members produce this product in the Kyrgyz Republic.

“Similar product” shall mean products which are identical or alike:

- identical products are the products similar in all respects;
- like products are the products which are not like in all respects, but have similar characteristics and comprise of similar components;

“Supplier” - a producer, exporter or importer of a subsidized product being subject to investigation;

“Countervailing measures” - a method of financial influence on the suppliers of a subsidized product applied by in the form of provisional measures and countervailing duties for the elimination of a threat of injury or injury resulted from importation of such product to the customs territory of the Kyrgyz Republic for free circulation.

“Countervailing duties shall mean duties applied by Customs Authorities of the Kyrgyz Republic in case of importation of subsidized products to the customs territory of the Kyrgyz Republic for free circulation, if such importation causes injury or threatens to cause injury to domestic producers of similar or directly competing goods, or prevents the organization and expansion of production of the similar goods in the Kyrgyz Republic;

“Objective criteria or conditions” shall mean criteria or conditions which are neutral and do not favor certain enterprises in comparison with others and which are economic in their essence and equal in application (the number of employees or size of an enterprise). Criteria or conditions must be clearly specified by legislation and other official documents.

“Domestic producers” shall mean Kyrgyz producers of goods similar or directly competing with subsidized goods whose aggregate production constitutes the main part of their total domestic production, except for interdependent producers.

“Official Bodies of the country” shall mean embassy, consulate, trade representation or Authorized Body of the country involved into investigation.

“Investigation” shall mean a procedure for the consideration of documents and other evidences in respect of importation to the customs territory of the Kyrgyz Republic of the subsidized product, importation of which causes or threatens to cause injury to domestic producers of a similar or directly competing product;

“Subsidy” shall mean financial assistance by the State (or by a public organization) to a certain enterprise or branch of industry and to a certain group of enterprises or branches of industry that can be provided in the form of State grants, loans, liabilities guarantees, shares purchase or provision of tax incentives, as well as provision of preferential prices for products cutting the costs of production or trade;

“Subsidized product” shall mean the product, for production or exportation of which direct or indirect subsidy was used, as a result, this product brings profit to the producer;

“Industrial research” shall mean a planned research work or an extremely necessary research in order to obtain positive results in the area of new knowledge with the purpose that such knowledge may be useful for the development of new products, processes or services or may provide significant improvement of existing products, processes or services;

“Pre-competitive development activity” shall mean transfer of the results of industrial research into the plan or the project for the creation of new, modified or improved products, processes or services intended for sale or exploitation, including the creation of the first pilot sample which can not be used for commercial purposes. Conceptual development and designing of alternative models of products, processes or services, initial demonstration or pilot projects may also be included, provided that these projects may not be used for industrial application or commercial purposes. The current or periodical changes of existing products, production lines, technological processes, services or other operations carried out in the normal order shall not be included, even if such changes may provide improvements.

“Authorized Body” shall mean the State body of the Government of the Kyrgyz Republic conducting investigation in respect of import of a subsidized product upon application of interested persons or on its own initiative.

## **Article 2. Area of Application of This Law**

1. This Law shall govern relations arising:
  - as a result of causation of injury or threat of injury to domestic producers through importation to customs territory of the Kyrgyz Republic, for free circulation, of goods produced or being supplied with the attraction of subsidies;
  - between the supplier of a subsidized product and official bodies of the country of export or production, on the one hand, and the domestic producer or producers of a similar or directly competing product and the authorized body, on the other hand.

## **Article 3. Goals and Implementation Principles of This Law**

1. The goal of this Law shall be protection of economic interests of the Kyrgyz Republic, as well as the interests of domestic producers of goods against unfair competition on part of suppliers of similar or directly competing goods produced or exported with the attraction of subsidies.
2. The decision on the application of countervailing measures shall be made by the Government of the Kyrgyz Republic as petitioned by the Authorized Body only under condition of presence of consequences of injury or existence of a threat of injury to economic interests of the Kyrgyz Republic, as well as domestic producers, resulting from delivery of subsidized products.
3. Countervailing measures may be applied only in case when the investigation procedure was undertaken in the accurate compliance with this Law.

## **Article 4. Legislation of the Kyrgyz Republic on Subsidies and Countervailing Measures**

1. Legislation of the Kyrgyz Republic on subsidies and countervailing measures shall include this Law, other legislative acts, and normative legal acts of the President and Government of the Kyrgyz Republic adopted in compliance with them, as well as normative legal acts of the Authorized Body.

2. In the event that international treaty or agreement ratified by the Kyrgyz Republic establishes rules other than those contained in this Law, rules of the international treaty or agreement shall be applied.

## **CHAPTER 2. STATE SUPERVISION [CONTROL]**

### **Article 5. State Supervision Bodies**

1. General management of the State supervision over the trade practice of suppliers of a subsidized product shall be carried out by the Government of the Kyrgyz Republic pursuant to legislation of the Kyrgyz Republic.

2. Direct activity on supervision and conduction of investigation of the facts of importation of a subsidized product shall be carried out by the Authorized Body to be determined by the Government or established by the President of the Kyrgyz Republic in accordance with established procedure.

### **Article 6. Authorized Body**

1. The Authorized Body shall operate within the framework of authorities provided by this Law and on the basis of Regulation to be approved by the Government of the Kyrgyz Republic.

2. In cases, stipulated by this Law, other legislative acts of the Kyrgyz Republic, acts of the President and the Government of the Kyrgyz Republic, the Authorized Body shall, within its competence, issue normative legal acts, as well as acts on investigation procedures.

3. In case of necessity to introduce countervailing duties, the Authorized Body shall submit drafts of Resolutions to the Government of the Kyrgyz Republic.

4. While implementing its functions, the Authorized Body shall cooperate with official bodies of other countries and international organizations.

## **CHAPTER 3. INITIATION OF INVESTIGATION**

### **Article 7. Submission of Application**

1. An application for conducting investigation of the facts of injury caused due to importation of a subsidized product shall be submitted, in writing, to the Authorized Body by domestic producers or on their behalf.

2. The application must contain the following information:

- name of the applicant and data on value and volume of production of the like product by the applicant;
- a complete description of the subsidized product, name of the country or countries of its origin or exportation, the list of all known suppliers of this product;
- evidence of existence, volume and character of subsidies;
- dynamics of supply of the subsidized product, its influence on the prices of the like product in the domestic market of the Kyrgyz Republic, and consequences of injury to domestic producers;
- the list of all known domestic producers of the like product, and known information on value and volume of production of the like product, produced by the named producers.

3. An application may be withdrawn by an applicant prior to the initiation of investigation and in the course of it. In case where the application has been withdrawn prior to the initiation of investigation, it shall be considered not submitted. If the application is withdrawn in the process of investigation, the Authorized Body shall be entitled to proceed the investigation or terminate it without measures undertaken.

4. In case where there is sufficient information to prove that the delivered product is subsidized and causes injury, the Authorized Body may take a decision to initiate an investigation on its own initiative without a written application.

#### **Article 8. Application Requirements**

1. An application must be submitted on behalf of the domestic producers whose aggregated output constitutes more than 50% of the total like product produced by that portion of the domestic producers who have expressed their opinion with respect to the application. Producers supporting the application shall account for not less than 25% of total production of the like products in the Kyrgyz Republic.

2. An application that does not meet the above requirements shall not be subject to consideration.

#### **Article 9. The Order for Consideration of Application**

1. The Authorized Body must examine the accuracy and completeness of the information indicated in the application and make a decision to hold investigation or refuse to hold investigation within 45 days after submission of the application.

2. If the Authorized Body considers submitted information to be non-complete or insufficient it must notify the applicant about this within 45 days as of receipt of an application. In the event the applicant revises or supplement his application, the term of consideration of the application starts from the date of receiving amendments and supplements.

#### **Article 10. Grounds for Refusal to Initiate Investigation Procedure**

1. The Authorized Body shall take a decision on refusal to hold the investigation in the following cases:

- if there are no significant evidence of deliveries of subsidized product or there are no consequences of injury from its deliveries;
- if individual share of deliveries from some country constitutes less than 1%, or if the total for such countries is not more than 3% of internal consumption in the Kyrgyz Republic;
- if the amount of subsidy is less than 1% of the product value.

2. After the decision on refusal to conduct investigation is made, the Authorized Body must notify the applicant about that, stating the reasons for refusal.

#### **Article 11. Decision on Initiation of Investigation**

The Authorized Body shall make a decision on initiation of investigation after study of all obtained evidences on deliveries of the supposedly subsidized product, determining availability of subsidies, their specificity, necessity and justification for the application of countervailing measures.

### **Article 12. Notification on Initiation of Investigation**

1. After the decision on initiation of investigation has been made, the Authorized Body shall:
  - notify all known interested parties about the initiation of an investigation;
  - publish notification in the official mass media edition.
2. Notification must contain information as follows:
  - information on the initiation of investigation;
  - the name of exporting country or countries and the product which is the subject to investigation;
  - the date of initiation of investigation;
  - a brief review of the information received and request for additional information;
  - terms for providing evidences and other data;
  - terms for submission of applications\petitions.
  - the time frame of hearing.

### **Article 13. Review of Application**

1. The Authorized Body shall, as soon as the investigation is initiated, provide the known exporters and the Government of Exporting Country and other interested parties with the full text of application at their request; confidential information is not subject to disclosure.
2. Where the number of the parties involved into investigation is too big, the Authorized Body may provide the Official Bodies of the exporting country(s) or relevant trade association with the text of the application.

## **CHAPTER 4. THE ORDER FOR DETERMINATION OF SUBSIDIES**

### **Article 14. Subsidized Product**

A product supplied from any country to the Kyrgyz Republic must be considered subsidized, if it brings profit to the supplier from countervailable subsidies calculated on the basis of the provisions of Articles 16 and 17 of this Law.

### **Article 15. Granting of Subsidies**

1. A subsidy may be granted either by the government of the country of origin of the delivered product, or by the government of an intermediate country from which the product is supplied (hereinafter referred to as “an exporting country” or “the country of export”).
2. If the products are delivered not from the country of origin, but from the country of export, the provisions of this Law shall be completely applicable, and the country of export shall be considered the country of origin.

### **Article 16. Determination of Existence of Subsidies**

1. Pursuant to this Law, the following types of financial assistance shall be deemed as subsidies:
  - (a) direct transfer of financial means (grants, loans and purchase of shares) by the Government to a supplier or indirect transfer of financial means or liabilities (loans guarantees).

- (b) exemption from payment or decrease in the amount of duties and taxes as well as delay of their payment during production or deliveries of the product that should be considered subsidies in cases where the indicated privileges do not extend to the like product intended for internal consumption.

Exemption from payment of such duties or taxes in the amount not exceeding the calculated sums shall not be deemed as a subsidy, under the condition that such exemption is granted in accordance with the norms of international law;

- (c) the Government shall provide goods or services (except for the provision of financial and other means for the development of general infrastructure) or procurement of the goods for suppliers;
- (d) the Government shall make payments to the mechanism of financing; or authorize the private structure or directs its activity in respect of one or several types of functions stated in items (a) - (c) which usually would be laid on the Government, and on terms and conditions which actually do not differ from the normal practice used by the Governments.

- 2. The subsidy exists if a benefit is thereby conferred.

#### **Article 17. Determination of Negligible Small/*De Minimis* Subsidy**

1. In the process of investigation, the amount of countervailable subsidies may be considered by the Authorized Body to be *de minimis* if such amount is less than 1% of the value of the product to be delivered, if the following conditions are observed:

- (a) while supplying from the developing countries, *de minimis* threshold shall not be more than 2% of the value of the product to be delivered;
- (b) for the WTO Developing Members, as well as for the WTO Developing Members which have completely eliminated export subsidies defined in Article 18 paragraph 4 (a) of this Law, *de minimis* subsidy threshold shall be 3% of the value of the product to be supplied. In case of elimination of the export subsidies, this provision shall apply from the date of notifying the WTO Committee on Subsidies and Countervailing Measures of elimination of the export subsidies for the whole period until the export subsidies are granted by the developing country concerned;

2. Investigation must be terminated if the amount of the countervailable subsidies established by the Authorized Body is *de minimis* for individual suppliers involved into investigation pursuant to this Article. A second investigation may be conducted with respect to these suppliers in the course of any subsequent review carried out for the country or countries of these suppliers, pursuant to the provisions of this Law.

#### **Article 18. Countervailability and Specificity of Subsidies**

1. Countervailing measures may be applied to subsidized products only in the case where subsidies are specific.

2. The subsidy shall be deemed to be specific for an enterprise or industry in the presence of the following features:

- (a) where the body granting the subsidy or the legislation, pursuant to which this body acts, limits the access of enterprises to the subsidy;
- (b) where the body granting the subsidy or the legislation, pursuant to which this body acts, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy. A subsidy can not be considered specific, provided that the eligibility for a subsidy is automatic and that such criteria and conditions are strictly adhered to.
- (c) if, notwithstanding any appearance of non-specificity of a subsidy resulting from the principles set forth in this paragraph, subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered, such as:
  - use of the subsidy programme by a limited number of enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, as well as the order of making a decision to grant a subsidy (information on the frequency with which the applications for a subsidy are rejected or accepted and the reasons for such decisions shall be considered.)

3. A subsidy granted to a limited number of enterprises located in a concrete geographical region within the jurisdiction of a subsidizing body shall be specific. The setting or change of generally applicable tax rates by all levels of government bodies entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Law.

4. The subsidies shall be deemed to be specific if they meet the following requirements :

- (a) subsidies contingent, whether solely or as one of several other conditions, upon export performance,
- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is provided to enterprises which export shall not for that reason alone be considered as export subsidy within the meaning of this provision.

#### **Article 19. Non-countervailable Subsidies**

1. The following subsidies shall not be liable to countervailing measures:

- (a) Subsidies which are not specific pursuant to Article 18 paragraphs 2 and 3 of this Law;
- (b) Subsidies which are specific, pursuant to Article 18 paragraphs 2 and 3 of this Law, but which meet the conditions provided for in paragraphs 2, 3 and 4 of this Article.

2. Subsidies for scientific research works carried out by enterprises or higher education or scientific research institutions on a contract basis with enterprises shall not be subject to countervailing measures, if the subsidies are not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity, and provided that such subsidies are limited exclusively to:



- (a) Personnel costs (scientific-research employees, technicians and other supporting staff employed exclusively for scientific research work);
- (b) Costs of instruments, equipment, land and buildings used exclusively and permanently (except for the cases when disposed of on a commercial basis) for scientific research activity;
- (c) Costs of consultations and equivalent services used exclusively for scientific research activity, including the purchase of scientific technical information, patents and etc;
- (d) Additional overhead costs incurred directly as a result of scientific research work;
- (e) Other running costs (such as costs of raw materials and materials, etc );

3. Subsidies to disadvantaged regions within the territory of the country of origin or exporting country, given pursuant to a general framework of economic development, and which would be non-specific if the criteria laid down in paragraph 2 and 3 of Article 18 of this Law were applied to each eligible region concerned, shall not be subject to countervailing measures provided that:

- (a) Each disadvantaged region is a clearly designated or contiguous geographical area to the other regions with a definable economic and administrative identity;
- (b) The region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances and such criteria must be clearly spelled out in legislation, norms and other official documents, as well as provide the opportunity for verification;
- (c) Neutral and objective criteria include a measurement of economic development which shall be based on at least one of the following factors determined within a three-year period:
  - one of income indicators (income per capita, income per one member of the family or GDP per capita) which must not exceed 85 per cent of the average indicator for the territory of country of origin or exporting country;
  - employment rate, which must be at least 110 per cent of the average for the territory of the country of origin or the country of export, but if such determination is difficult, it may include other factors.

4. Subsidies for reconstruction and adaptation of the existing production facilities (production facilities which have been in operation for at least two years at the time when new environmental requirements are imposed) to new environmental protection standards required by law or norms that make the enterprise obligated and impose financial penalties for violation of standards shall not be subject to countervailing measures, provided that the subsidy:

- (a) is a one-time non-recurring measure;
- (b) is limited to 20 per cent of the total reconstruction costs amount;
- (c) does not cover the cost of replacing and operating equipment, purchased by means of the subsidized investment, which must be fully incurred by firms;

- (d) is directly linked to the plans of an enterprise to reduce nuisances and pollution and does not cover any manufacturing cost savings which may be achieved; and
- (e) is available to all firms which can adopt the new equipment or technological processes.

5. The allowable amounts of non-countervailable subsidy shall be established by reference to the total eligible costs incurred over the duration of a concrete project.

In the programmes including both industrial research and pre-competitive development activity, the allowable level of non-countervailable subsidy shall not exceed the average of the allowable levels of non-countervailable subsidy applicable to these programmes, calculated on the basis of all eligible costs set forth in Article 18 paragraph 3 of this Law.

6. A general picture of regional development shall mean that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no influence on the development of a region.

7. Neutral and objective criteria shall mean criteria which do not provide more than necessary support to the certain regions in order to eliminate or reduce regional differences within the framework of the regional development policy. In this regard, regional subsidy programmes shall include maximum amounts of subsidies which can be granted to each subsidized project. Such maximum amounts must be differentiated according to the levels of development of eligible regions and must be calculated on the basis of investment costs or the cost of job creation. Within these maximum amounts, the distribution of subsidies must be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amount of subsidy to, certain enterprises. This paragraph shall be applied in the light of the criteria set out in Article 18 paragraphs 2 and 3 of this Law.

#### **Article 20. The Amount of Countervailable Subsidy and Period of Investigation**

The amount of countervailable subsidies shall be calculated on the basis of the amount of benefit received by a supplier.

In the process of investigation, the Authorized Body shall review the reporting documentation of the suppliers involved into investigation, covering not less the six months preceding the date of investigation for which reliable financial and other data with respect to the investigation are available.

#### **Article 21. Calculation the Amount of Benefit for the Recipient of a Subsidy.**

When calculating the amount of benefit obtained by the supplier, the Authorized Body shall apply the following rules:

- (a) The State share in the authorized capital of enterprises shall not be considered as a benefit, if presence of the State share complies with the common practice of State participation (including the provision of "risk" capital) at the investments of enterprises in the territory of the country of origin or export.
- (b) A loan by a government shall not be considered a benefit, unless there is a difference between the amount that the enterprise receiving the loan pays on the government loan and the amount the enterprise would pay on a comparable commercial loan

which the enterprise could obtain at the same period of time on the market. In this case the benefit shall be the difference between these two amounts.

- (c) A loan guarantee by a government shall not be considered a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm 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.
- (d) The provision of goods or services or purchases of goods by a government shall not be considered a benefit unless the provision is made for less than adequate payment, or the purchase is made for more than adequate payment. The adequacy of payment 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).

#### **Article 22. General Provisions on Calculation of Countervailable Subsidies**

The amount of countervailable subsidies shall be determined according to the following provisions:

- (a) The amount of countervailable subsidies shall be determined per unit of the subsidized product imported to the Kyrgyz Republic.
- (b) In establishing this amount from the total sum of subsidy, the following elements must be deducted:
  - application fee, or other necessary costs incurred in order to obtain right to a subsidy or to obtain a subsidy;
  - export taxes, duties or other collections levied on the supplied product specifically intended to offset the subsidy.
- (c) If the granting of the subsidy does not depend on the quantity of goods manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by locating accordingly the total amount of subsidy over the level of production, sales or export of the products concerned during the investigation period for subsidization.
- (d) 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 of depreciation of such assets in the branch industry concerned. The amount so calculated which is attributable to the investigation period, including the amount linked to fixed assets acquired before this period, shall be allocated as described in subparagraph (c) hereof.
- (e) Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of benefit received during the investigation period shall be attributed to this period and allocated as described in subparagraph (c) hereof, unless special circumstances arise justifying attribution over a different period.

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

## **SECTION 5. DEFINITION OF INJURY**

### **Article 23. Principles for Determination of Injury**

A determination of injury shall be based on evidences and shall include an objective examination of the volume of supplies and the effect of supplies on prices of like products in the internal market, as well as consequences of these supplies for domestic producers of such products.

### **Article 24. Study of the Volume of Supplies and Prices of Products**

1. When studying the volume of supplies, the Authorized Body shall determine whether there has been a significant increase in supplies, either in absolute terms or with respect to production or consumption in the Kyrgyz Republic.
2. When studying the effect of supplies on prices, the Authorized Body shall determine whether there has been a significant price undercutting on the product being supplied as compared with the price of a like product in the market or whether the effect of such supplies is to depress, by other way, prices to a significant degree or prevent price increase, which otherwise would have occurred.

### **Article 25. Determination of the Scale of Negligible Injury**

1. The scale of injury shall be regarded as negligible where the share of supplies is less than the share set force in Article 26 of this Law.
2. The volume of supplies from developing countries to the Kyrgyz Republic shall be considered negligible if it represents less than 4 per cent of the total volume of supplies of the like product to the Kyrgyz Republic, and on condition that supplies from developing countries with the individual share less than 4 per cent collectively account for not more than 9 per cent of the total volume of supplies of the like products to the Kyrgyz Republic.

### **Article 26. Cumulative Evaluation**

Where supply of a product from more than one country is simultaneously subject to countervailing duty investigations, the cumulative effect of such supplies shall be assessed only if it is determined that:

- the amount of countervailable subsidies established in relation to the supplies from each country is more than *de minimis* as established in Article 17 of this Law and that the volume of supplies from each country is not negligible;
- cumulative assessment of the effect of the supplies is carried out both in the light of competition between products being supplied and between the products being supplied and the like domestic products.

### **Article 27. Evaluation of the Impact of Supplies of the Subsidized Products on Domestic Producers**

1. Examination of the impact of supplies on domestic producers shall include evaluation of all economic factors and indexes relevant to the case and affecting the condition of domestic producers, including :
  - the fact that an industry or some producers are still in the process of recovering from injury caused by supplies of subsidized or dumped products in the past;
  - the amount of countervailable subsidies;

- actual or potential decrease in sales, profits, output, market share;- productivity, return on investments, utilization of production facilities;
- factors affecting prices in the Kyrgyz Republic;
- actual or potential negative impact on cash flow, inventories, employment, wages, growth rates , ability to attract capital or investments and, in respect of agriculture, increase in the necessary expenditures to support programmes by the Government.

This list is not exhaustive. Neither one nor several of these factors can be decisive.

2. The Authorized Body shall assess the impact of supplies on the internal production of like goods if available data permit to separate this production on the basis of the following criteria: production process, sales by producers and profit. If such separation is not possible, the effect of the subsidized supplies shall be assessed by the examination of the production of the narrowest group or nomenclature of products including the like product, for which the necessary information can be provided.

### **Article 28. Evidence of Existing Injury**

1. On the basis of actual data the Authorized Body must prove that the subsidized supplies cause injury to domestic producers. Any actual data presented by the interested persons may serve as an evidence of causal linkage between the supply of the subsidized product and the injury to domestic producers.

2. Known factors other than the supplies of subsidized products which at the same time are injuring the domestic producers shall be examined by the Authorized Body, but this injury shall not be attributed to the supplies of the subsidized product. These factors, in particular, shall include the volume and prices of non-subsidized goods, decrease of demand or changes in the consumption pattern, restricted trade practice and competition between foreign and domestic producers, technologic achievements as well as results of supplies and productivity of domestic industry.

### **Article 29. Injury to Regional Producers**

If in exceptional circumstances the Authorized Body divides the territory of the Kyrgyz Republic into two or more competitive markets, injury may be found to exist with respect to regional producers so determined even where a major portion of the total republican industry is not injured, provided that there is a concentration of the subsidized goods in this market and supplies of subsidized products are causing injury to the producers of all or almost all like products within such market.

### **Article 30. The Threat of Injury**

1. The Authorized Body shall make its determination\statement of a threat of injury to domestic producers from supplies of subsidized goods on the basis of proved facts. The change of circumstances creating the situation in which the supplies of subsidized products may cause injury must be clearly foreseen and inevitable.

2. In making a determination regarding the existence of a threat of injury, the Authorized Body shall in particular consider the following factors:

- (a) the nature of the subsidy and the trade effects likely to arise therefrom;
- (b) a significant growth of supplies of subsidized products, indicating the likelihood of substantially increased volume of supplies;

- (c) availability of sufficient export potential of a supplier or inevitable substantial increase in export potential indicating the likelihood of substantial increase in supplies, taking into account the ability of other markets to absorb any volume of additional supplies;
- (d) supplies at prices that will provide decreasing or depressing effect on the growth of prices in the internal market, are likely to increase demand for additional supplies;
- (e) inventories of the product being investigated.

None of these factors can have a decisive meaning by itself but the totality of the factors considered must lead to the conclusion that further supplies of subsidized goods are inevitable and in the event of non-application of countervailing measures injury will be caused to domestic producers or delay in the creation of appropriate branch in domestic industry.

## **SECTION 6. CONDUCT OF INVESTIGATION**

### **Article 31. Terms of Investigation**

The period for investigation in respect of the subsidized product shall be up to six months. In exceptional cases the investigation term may be extended for six months.

### **Article 32. Request of Information**

1. After the initiation of investigation the Authorized Body shall forward requests to the interested parties. The interested parties shall have 30 days for preparation of responses to the questions. This term may be extended, but not more than for 30 days. The request shall be considered as being received a week after it has been sent by mail or delivered to the representative of the interested party.

In the process of investigation, the Authorized Body may require additional information from the interested parties, setting up a term by which the response must be given.

2. Each interested party shall have a right to submit any other evidences in written form, which it considers to be necessary.

### **Article 33. Confidentiality**

1. Information being submitted as confidential to the Authorized Body in the process of investigation, and having sufficient justification, shall be considered as such and shall not be disclosed in any way without written authorization of the submitting party.

2. The party that provides confidential information must furnish a non-confidential explanatory summary thereof.

The summary shall be enough detailed to make the substance of the information understandable or shall explain the reasons why the provision of detailed non-confidential information is impossible .

3. If the Authorized Body finds that a request for confidential information is not justified, or if the supplier of the information is either unwilling to disclose information or does not authorize its

disclosure in generalized or summary form, the authorized body may disregard such information except for the cases when it is proved that this information is authentic.

4. The person responsible for disclosure of confidential information shall bear the responsibility pursuant to legislation of the Kyrgyz Republic

#### **Article 34. Verification at Place**

In order to verify reliability of information or to obtain additional data with the agreement of parties involved into investigation and the official bodies of the country or countries involved into investigation having no objections, and under observance of the norms of international law, the Authorized Body may hold an investigation in the territory of these countries. In case of necessity, the investigation may be conducted in the territory of third countries upon the decision of the Authorized Body and under observance of the provisions of this Article.

#### **Article 35. Sufficiency of the Information Available**

In the event when any interested party does not submit the necessary data within the time period offered by the Authorized Body or makes the investigation more difficult in any other way, the Authorized Body shall be entitled to make any decision on the basis of data available.

#### **Article 36. The Order to Hold the Case**

1. Each investigation shall be conducted by the Authorized Body as a case in accordance with its established form and in writing. All the documents related to investigation shall be attached to the case.

2. The materials of the case shall be presented to the interested parties for getting familiar upon their request during investigation and in the process of case revision.

#### **Article 37. Hearings**

1. The interested individuals shall have the right to submit a petition to the Authorized Body to conduct preliminary hearings of a case in order to get acquainted with the materials of a case as well as arguments of the other party.

2. Hearings shall be conducted under the chairmanship of an official of the Authorized Body, who shall ensure confidentiality. The representatives of the Authorized Body shall be present at hearings as well as the witnesses of the parties, who shall be informed in advance.

3. Additional hearings shall be possible only if the petition on additional hearings is justified.

4. While conducting a hearing, a protocol shall be recorded. The interested sides shall be entitled to provide additional information verbally. The verbal information, presented pursuant to the requirements of this Article shall be considered after the written confirmation.

#### **Article 38. A Preliminary Positive Ruling**

If the existence of injury from supplies of the subsidized product is confirmed by evidences, obtained in the process of investigation, the Authorized Body shall make a preliminary positive ruling, which shall be a ground for undertaking of the provisional measures or acceptance of undertakings on prices from the supplier.

### **Article. 39 Notification on Imposition of Provisional Measures**

A notification about the intention to impose provisional measures shall be sent to all the interested persons within 30 days before their application. Within 10 days after notification, the persons involved into investigation shall be entitled to submit written comments in respect of the grounds for the imposition of provisional measures.

### **Article 40. Publication of the Decision on Imposition of Provisional Measures**

The provisional measures shall be effective from the moment of publication of the decision on introduction of provisional measures in the official mass media edition. The publication must include the following data:

- names of suppliers or countries from which a product has been delivered;
- detailed description of a product (sufficient for customs purposes);
- established amount of a subsidy and full explanation of application of reasons for the application of calculation methodology;
- injury evaluation criteria;
- main grounds for the imposition of the provisional measures;
- other information, necessary for understanding of actual circumstances and legal aspects.

Confidential information must not be included into publication.

### **Article 41. Provisional Countervailing Measures and Order of Their Application**

1. Upon reaching a preliminary positive ruling on the presence of countervailable subsidies and injury, within a week, the Authorized Body shall send a notification to all interested parties and official bodies of their countries on the application of provisional countervailing measures. The parties involved into investigation shall have the right to present their written comments in respect of the grounds of imposition of provisional countervailing measures within the term established by the Authorized Body.

2. Provisional countervailing measures shall be applied by the customs bodies of the Kyrgyz Republic on the basis of a decision made by the Government of the Kyrgyz Republic as petitioned by the Authorized Body.

3. The amount of provisional countervailing measures shall not exceed the preliminary established total amount of subsidies, but may be less than this amount, if such amount is sufficient to eliminate injury caused to domestic producers.

4. The provisional countervailing measures shall be established in the form of provisional countervailing duties, pledge liability or monetary deposit.

5. Release of goods for free circulation, in respect of which the provisional countervailing measures are applied, shall be implemented only after the application of provisional measures.

6. In the event the amount of provisional measures exceeds the amount of subsidies, confirmed in the process of investigation, the supplier shall be entitled to refund of the exceeding amount. The Authorized Body must make a decision about a refund of the amount paid over the amount of subsidies on the basis of petition. The refund shall be made within 30 days from the day of submission of a petition.



#### **Article 42. Terms for Application of Provisional Countervailing Measures**

1. Provisional countervailing measures shall be applied after the preliminary positive ruling is made, but not earlier than in 2 months and not later than 9 months from the beginning of investigation.
2. The period of validity of provisional measures must not exceed 4 months.

#### **Article 43. Investigation in Respect of the Third Parties**

1. An investigation in respect of a supplier not related to the supplier or suppliers of products imposed by countervailing duties, and who started his deliveries after completion of an investigation, must be initiated within 30 days and completed not later than 12 months from the day of receipt of an application from him.
2. In the process of investigation, the countervailing duties shall not be applied, however, the Authorized Body shall be entitled to introduce the provisional measures pursuant to the order stipulated by this Law.

### **CHAPTER 7. COMPLETION OF AN INVESTIGATION**

#### **Chapter 44. Completion of an Investigation**

1. The Authorized Body shall inform all the interested parties of the main facts, on the basis of which a decision is made, no later than one month before the final decision is made.

The interested parties may within 15 days submit their comments on the indicated facts.

2. The investigation conducted by the Authorized Body on evaluation of injury from import of the subsidized product shall be finalized by making the following decisions:
  - termination of an investigation without undertaking measures;
  - price undertakings;
  - introduction of countervailing duties;

#### **Article 45. Grounds for Termination of an Investigation without Undertaking of Measures**

1. The investigation shall be terminated without undertaking of measures in case where it is clear that there is no sufficient evidence of supplies of the subsidized product or injury resulting from it.
2. The investigation shall be terminated without undertaking of measures if it is determined that the amount of subsidies is *de minimis* or the volume of supplies of the subsidized product (actual or potential) or of injury is negligible pursuant to Article 10 of this Law.

#### **Article 46. Price Undertakings**

1. The investigation shall be suspended or terminated without imposition of the provisional countervailing measures or final countervailing duties after obtaining the voluntary undertaking from the Government of the country granting a subsidy on the elimination of consequences or obligation of the supplier to revise the price or terminate the supplies of the subsidized product which would eliminate harmful consequences.

2. Increase of prices on such undertakings may not be more than it is necessary to compensate for the amount of subsidies and in any case sufficient for the elimination of harmful consequences to domestic producers.

#### **Article 47. Conditions for Acceptance of Price Undertakings**

1. A price undertaking may be accepted by the Authorized Body only after a preliminary positive ruling is made in respect of availability of subsidizing of production or supply of the product as well as injury caused to domestic producers due to sales of these products.

2. A price undertaking may not be accepted if the Authorized Body considers the acceptance to be practically impossible due to a great number of suppliers or due to other reasons. The Authorized Body must inform suppliers or official bodies of the country about these reasons.

#### **Article 48. Control over Observance of Price Undertakings**

1. The Authorized Body shall be entitled to demand from a supplier and official bodies of a supplying country, whose undertaking was accepted, to submit data on execution of the accepted undertaking, as well as check of reliability of these data.

2. In case of violation of the accepted undertakings by the Government of the supplying country or by a supplier, the Government of the Kyrgyz Republic shall have the right to apply, as petitioned by the Authorized Body, provisional measures or, if an investigation has been completed and a decision on availability of a subsidy or injury has been made, to introduce countervailing duties.

#### **Article 49. The Effect of Price Undertakings**

1. The Authorized Body shall be entitled to terminate an investigation in case of fair fulfilment by a supplier of price undertakings accepted.

2. The Authorized Body shall proceed with the investigation after acceptance of price undertakings in order to determine availability of subsidies and injury in the cases when a supplier, who accepted price undertaking, insists on that or on its own initiative.

3. Price undertaking shall be cancelled by the Authorized Body if the absence of subsidies or injury is established.

4. In any case, the price undertaking shall be in force till the full elimination of the consequences of the injury.

#### **Article 50. Notification on Acceptance of Price Undertaking**

1. After accepting price undertaking, the Authorized Body shall forward a notification about it to all the interested parties under observation of confidentiality pursuant to Article 33 of this Law.

2. Price undertaking shall be considered accepted in 7 days after the notification is sent by mail or handed to the official bodies of the country.

#### **Article 51. Levying of the Countervailing Duties**

1. On the basis of positive ruling of the Authorized Body and the decision of the Government of the Kyrgyz Republic on introduction of countervailing duties, the Customs Bodies shall levy them on all the supplied product in respect of which an investigation has been conducted, if a subsidy or

subsidies are not revoked or it is not proved that subsidies are not profitable any more for the suppliers involved into the investigation.

A countervailing duty shall be levied by the Customs Body in the supply of the products that come from all sources and bring profit from subsidies and are a cause of injury, excluding import by those suppliers from whom the price undertakings have been accepted.

2. In the decision on introduction of the countervailing duties, the supplier or suppliers of the subsidized product shall be named.

In the event if several suppliers from one country are involved into the case and it is impossible to name all the suppliers, only the country shall be named.

If several suppliers from more than one country are involved into the case, the Authorized Body may name either all the suppliers involved or if it is practically impossible, each of the countries-suppliers involved.

3. The countervailing duties shall be levied in addition to the customs duties, taxes and other payments.

4. None of the supplied products shall be subject to levying of countervailing and anti-dumping duties simultaneously.

#### **Article 52. Notification on Completion of Investigation and on Introduction of Countervailing Duties**

The decision to introduce countervailing duties shall be effective from the day of publication of the decision of the Government of the Kyrgyz Republic in the official mass media edition. The publication shall contain information pursuant to Article 40 of this Law, as well as the reasons of acceptance or rejection of arguments or demands of the suppliers.

#### **Article 53. Determination of an Amount of the Countervailing Duties.**

The countervailing duties shall be established in the amount sufficient for elimination of consequences of injury due to the import of the subsidized product. The amount of the countervailing duties shall not exceed the amount of subsidies.

#### **Article 54. Term of Validity of Countervailing Duties**

The term of validity of countervailing duties shall not exceed 5 years from the date of their introduction or the last revision. The revision of validity term of the countervailing duty shall be carried out by the Authorized Body on its own initiative or on the basis of an application submitted by any interested party no later than three months before expiration of its validity. In case if it is established by the Authorized Body, that termination of collection of duties will lead to continuation or resumption of import of the subsidized product, than duties shall be imposed on the product till the elimination of the consequences of injury.

### **CHAPTER 8. FINAL PROVISIONS**

#### **Article 55. The Terms for Application of Countervailing Duties**

1. The countervailing duties can not be imposed on the subsidized product, released for circulation before the date of initiation of an investigation.

2. The countervailing duties shall be applied only to those subsidized products, which are in free circulation after the decisions on introduction of these measures and duties have become effective, except for the cases set up in the paragraphs 3 and 4 of this Article.

3. The countervailing duties may be applied as of the date of introduction of provisional countervailing measures only in the cases if the Authorized Body has made a preliminary positive ruling on the existence of injury or threat of injury and these measures have been applied to this product.

4. The countervailing duties may be imposed on the product issued in free circulation not earlier than 90 days before the date of introduction of provisional measures, if in the course of investigation it has been established, that an injury had been caused due to the massive import of a subsidized product in the short period of time, and for recovery of consequences caused by injury it is necessary to impose the countervailing duties before the date of introduction of provisional countervailing measures.

#### **Article 56. Calculation Procedure**

1. If the amount of countervailing duty is more than the amount of effective provisional countervailing measures, the difference shall not be collected. If the countervailing duty is less than the amount of effective provisional countervailing measures, the difference shall be reimbursed or the amount of the duty shall be re-calculated.

2. Under determination of threat of injury by the Authorized Body, the countervailing duty may be applied only from the date of passing a positive ruling on the existence of a threat of injury, and the effective provisional countervailing measures must be cancelled, and any cash deposit made in the period of application of provisional countervailing measures shall be refunded, and any price undertaking must be cancelled.

3. If in the process of an investigation, absence of subsidies and injury has been determined, all provisional measures must be cancelled within 10 days, and the collected amounts shall be reimbursed within 30 days pursuant to established order.

#### **Article 57 . Cancellation or Change of Measures**

1. The Authorized Body may, no later than within three months, on its own initiative or on the initiative of the interested parties, consider the necessity of continuation of application of the countervailing measures or a possibility for their change.

In case, if it is established, that the applicable measures are not justified, they must be cancelled or their amount shall be changed.

#### **Article 58. The Order of Appealing the Decisions**

Decisions made by the Authorized Body pursuant to this Law may be appealed by the interested persons pursuant to the order stipulated by the legislation of the Kyrgyz Republic.

**Article 59. The Order for the Implementation of the Law**

The current Law shall be effective from the moment of its signing.

A. Akaev

President of the Kyrgyz Republic

Adopted by the Legislative Assembly  
of Jogorku Kenesh of the Kyrgyz Republic on 7 October 1998

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