



2 August 2016

(16-4143)

Page: 1/106

Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures
Committee on Safeguards

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

KAZAKHSTAN

Revision

The following communication, dated 20 July 2016, is being circulated at the request of the Delegation of Kazakhstan.

I. RELEVANT LAWS AND REGULATIONS

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards please find attached texts of laws and regulations as of February 2016.

The English text of the attached laws and regulations is not an officially translated text.

II. TRANSPARENCY

1. The Department for Internal Market Defence of the Eurasian Economic Commission is the responsible authority for conducting safeguard, antidumping and countervailing investigations.

Address: Smolensky boulevard, 3/5, Moscow, Russian Federation, 119121
Tel: +7 (495) 669-24-00 (*1272)
Fax: +7 (495) 669-24-00 (*1109)
E-mail: tradedefence@eecommission.org
Website: <http://eec.eaeunion.org>

2. Notifications of the responsible authority concerning safeguard, antidumping and countervailing actions are published on the website of the Eurasian Economic Community at <http://www.eurasiancommission.org>.

The list of laws and regulations:

1. Decision of the EEC Board of 7 March 2012 No. 1 "On some issues of safeguard, antidumping and countervailing measures in the common customs territory of the Customs Union";
2. Provision for the use and protection of confidential information and proprietary information of limited distribution in the body responsible for investigating of 7 March 2012;
3. Regulation making and draft decisions of the Eurasian Economic Commission for safeguard, antidumping and countervailing measures of 7 March 2012;

4. Board of EEC Decision No. 44 of 16 May 2012 "On some issues of protection of the domestic market";
 5. Articles 48-50 to the Treaty on the Eurasian Economic Union signed on 29 May 2015;
 6. Annex 8 "Protocol on Application of safeguard, anti-dumping and countervailing measures with regard to the Third countries" to the Treaty on the Eurasian Economic Union signed on 29 May 2015;
 7. Law of the Republic of Kazakhstan No. 316-V "On the application of safeguard, anti-dumping and countervailing measures with regard to the Third countries" of 8 June 2015.
-

Unofficial translation

**Decision
7 March 2012
No. 1**

**On some issues of safeguard, antidumping and countervailing measures
in the common customs territory of the Customs Union**

Board of Eurasian Economic Commission decided:

1. To authorize as the body responsible for the investigation prior to the introduction of safeguard, antidumping and countervailing measures in the common customs territory of the Customs Union (hereinafter - the investigation), assigned to the Department of Protective Measures in Foreign Trade of Secretariat of the Commission of the Customs Union Customs Union Commission Decision of 23 September 2011 No. 802, the Department for Internal Market Defense of the Eurasian Economic Commission, and entrust it upon the date of entry into force of this Decision, the investigation and other procedures within the authority granted to that authority by the Agreement on the application of safeguard, antidumping and countervailing measures in relation to third countries on 25 January 2008 and other laws and regulations that form the legal base of the Customs Union with safeguard, antidumping and countervailing measures.

2. To approve:

Provision for the use and protection of confidential information and proprietary information of limited distribution in the body responsible for investigating (attached);

Regulation making and draft decisions of the Eurasian Economic Commission for safeguard, antidumping and countervailing measures (attached).

3. To consider paragraphs 1, 2 and 4 of the Customs Union Commission Decision of 23 September 2011 No. 802 to be expired.

Chairman

V.B. Khristenko

**Approved by
Decision of the Board
Eurasian Economic Commission
of 7 March 2012 No. 1**

**Provision on the use and protection of confidential information and
proprietary information of limited distribution in the
body responsible for investigations**

1. General provisions

1.1. This Regulation determines the treatment of documents that contain confidential and proprietary information of limited distribution, regulates the relations connected with the protection of the information received and used by the body responsible for investigations (hereinafter - the authority conducting the investigations) for the purpose of processing applications for safeguard, anti-dumping or countervailing measures, investigations, as well as perform other procedures involving the use of safeguard, antidumping and countervailing measures in a single customs territory of the Customs Union.

1.2. For the purposes of this Regulation, the following definitions:

- Confidential information - limited access, is not classified as a state secret (state secrets), provided on a confidential basis by the applicants, participants in the investigation or other interested persons to the authority conducting investigations, or information provided at the request of the authority conducting the investigations, the competent authorities or authorized member-states of the Customs Union, as defined in

Article 1 of the Protocol on the procedure for granting the authority conducting the investigations, the information contained, including confidential information, for the purposes of investigation, prior to the introduction of safeguard, antidumping and countervailing measures, in relation to third countries of 19 November 2010 (hereinafter - the competent or authorized bodies of the states - members of the Customs Union), which is classified in accordance with the laws of a member-state of the Customs Union to the commercial or other legally protected information (secret);

- Proprietary information of limited distribution - information that is not classified as a state secret (state secrets), provided the authority conducting the investigations, the competent or authorized bodies of the member-states of the Customs Union, referred to under the laws of the state - a member of the Customs Union to the limited distribution of proprietary information;
- The protection of confidential information and proprietary information of limited distribution - the adoption of legal, organizational and technical measures aimed at eliminating improper disclosure, access, destruction, modification, copying, and other unjust acts in relation to such information;
- Disclosure of confidential information and (or) proprietary information of limited distribution - the act or omission of the head and (or) the officials of the authority conducting the investigations, as a result of which the information in any way possible (oral, written or other form, including the use of technical tools) becomes known to others.

1.3. Confidential information and proprietary information of limited distribution can be used only for the purposes for which such information was requested by the authority conducting the investigations or for which it was provided to this authority by the parties on a voluntary basis.

1.4. Authority conducting the investigations shall not disclose confidential information without the written consent of the person or body provided it.

1.5. This provision shall not preclude the disclosure by the authority conducting investigations the reasons underlying the decision of the Eurasian Economic Commission (hereinafter - EEC), or evidence relied upon EEC, to the extent that is necessary to explain those reasons or evidence in court authorized to review claims in the framework of the Agreement on the application of safeguard, antidumping and countervailing measures against third countries from 25 January 2008.

1.6. The procedure for documents that contain confidential information, and (or) proprietary information of limited distribution that protects such information, set the documents the authority conducting the investigations, in accordance with the provisions of it.

1.7. Responsibility for the organization of work for the protection of confidential information and proprietary information of limited distribution in accordance with the regulations rests with the head of the authority conducting the investigations.

1.8. This provision applies to all structural units of the authority conducting the investigations.

2. Procedure of access to confidential information, responsibilities of staff admitted to confidential and proprietary information of limited distribution

2.1. The head and employees of the authority conducting the investigations shall:

- read by hand with this provision and other documents of the authority conducting the investigations, on the protection of confidential and proprietary information of limited distribution;
- sign an individual written undertaking not to disclose confidential information in compliance with Appendix hereto, in duplicate, one for the head or for the employee of the authority conducting the investigations, the second is kept on personal file of the head or employee not less than 3 years after his dismissal.

2.2. The head and employees of the authority conducting the investigations are not allowed to work with confidential information to meet the requirements established by subparagraph 2.1 of the Regulation.

2.3. The head and employees of the authority conducting the investigations shall:

- not disclose confidential information and proprietary information of limited distribution;
- comply with the treatment of documents that contain confidential information, and (or) proprietary information of limited distribution, installed in a body conducting an investigation;
- comply with the rules for dealing with the protection of information and access to documents in electronic form, contains confidential information and (or) proprietary information of limited distribution, in its treatment;
- take measures to protect confidential information and proprietary information of limited distribution, hindering its unauthorized disclosure.

3. Access to confidential information and proprietary information of limited distribution

3.1. The head of the authority conducting the investigations, and his deputies have access to confidential information and proprietary information of limited distribution in full.

3.2. Access level of employees of the authority conducting the investigations, confidential information and proprietary information of limited distribution is limited to the extent necessary for the performance of their duties.

3.3. List of officials of the authority conducting the investigations, with access to confidential information and (or) the overhead of limited distribution within the application on the application of safeguard, antidumping or countervailing measures, conduct investigations, and perform other procedural actions related to the use of the common customs the Customs Union of safeguard, antidumping and countervailing measures, determined by the head of the authority conducting investigations or his deputy.

4. Responsibility of the head and employees for disclosing confidential information and proprietary information of limited distribution

4.1. For willful or negligent disclosure of confidential information and (or) the overhead of limited distribution, as well as a violation of procedures for handling documents that contain such information the head and employees of the authority conducting the investigations, subject to disciplinary liability in the form of dismissal from office, in accordance with the laws of the member-state of the Customs Union, where the authority conducting the investigations is situated.

4.2. It shall be conducted official investigation on the facts of the disclosure of confidential information and (or) proprietary information of limited distribution or on violation of procedures for handling documents that contain such information which shall be resulted if necessary in appropriate decisions.

4.3. The head or employees of the authority conducting the investigations, in breach of its obligations to disclose confidential information shall be deprived of the immunity provided by the Convention on the Privileges and Immunities of the Eurasian Economic Community, on 31 May 2001, and for the disclosure of confidential information in the sphere which is a secret protected by the law of the member-state of the Customs Union, subject to administrative, civil or criminal liability under the law of a Member State of the Customs Union, in which the body conducting the investigation.

5. Requirements for the treatment of documents that contain confidential information and proprietary information of limited distribution

5.1. Documents containing confidential information should be reported to investigators should be marked "Confidential", which appears in the upper right corner of each page.

Documents containing proprietary information of limited distribution should be reported to the authority conducting investigation processed in accordance with the laws of the member-state of the Customs Union.

The sender shall specify the name of the authority conducting the investigations on mailing envelopes containing confidential information or proprietary information of limited distribution.

5.2. Correspondence addressed to the authority conducting the investigations, the service received by the office of EEC, the day of its receipt is transferred to the recipient without opening envelopes.

In the case of postal delivery courier officer responsible for correspondence of the authority conducting the investigations, is called to the EEC service office for correspondence under his signature.

5.3. Outgoing documents the authority conducting the investigations, confidential information of interested parties should be marked "Confidential," which appears in the upper right corner of each page.

The above documents deposited authority conducting the investigation, with the ECE office in sealed envelopes, decorated in the manner prescribed in the state - the customs union, in which the body conducting an investigation, to send by registered mail with return receipt to the recipient.

Notification of delivery to the addressee letter received by the service office of ECE, the day of its receipt is transmitted to the body conducting the investigation.

5.4. Registration and recording of documents containing confidential information, and incoming documents that contain proprietary information of limited distribution, is in a body conducting an investigation, separate from other documents.

5.5. Outgoing documents of the authority conducting the investigations, containing confidential information and (or) proprietary information of limited distribution, sent to the government of the member-states of the Customs Union, the competent or authorized bodies, specified in paragraph 1.2 of this provision, the Chairman and members of the Board of ECE, are formed as documents containing proprietary information of limited distribution, marked "For Official Use Only" and indicating the number of copies.

Registration of such documents shall be in the manner prescribed in EEC for documents containing proprietary information of limited distribution.

5.6. The treatment of documents containing confidential information and (or) proprietary information of limited distribution in the authority conducting the investigations, provides:

- implementation of registration and recording of documents containing confidential information, and (or) proprietary information of limited distribution, including copies thereof;
- restriction on reproduction (replication) of documents containing confidential information and proprietary information of limited distribution;
- transfer under a list of documents containing confidential information, and (or) proprietary information of limited distribution, and copies thereof;

- ensuring proper storage of documents containing confidential information and (or) the proprietary information of limited distribution, and copies thereof;
- monitoring implementation of measures to ensure the protection of confidential information and proprietary information of limited distribution, including processed with computer equipment.

5.7. Work actions with confidential and proprietary information of limited distribution in electronic form are carried out in the local network of the authority conducting the investigations, with the comprehensive protection of electronic documents.

5.8. It is prohibited placing documents containing confidential information and (or) the proprietary information of limited distribution, in the Internet and the local network of EEC, as well as access to the network of the authority conducting the investigations, from the Internet or local EEC network.

5.9. IT officers and technical support are admitted to facilities containing confidential information and (or) the proprietary information of limited distribution, to the extent necessary to ensure functioning the hardware and software products.

Annex

COMMITMENT

Confidentiality

I, _____ (Name of Officer)

Acting on work status _____

_____ (Title, name of the structural unit) warned that during the period of performance of official duties I will be given access to confidential information.

I hereby voluntarily assume the following responsibilities:

Not disclose to third parties confidential information coming to my knowledge in the exercise of official duties.

1. Comply with regulations governing the issues of treatment and protection of confidential information.
2. In the case of third-party attempts to get sensitive information from me immediately inform the supervisor in writing or orally.
3. Do not use confidential information for the purpose of obtaining a personal benefit.
4. After termination of the right to access to confidential information not to disclose or transfer to third parties.
5. Upon termination or termination of the employment contract pass on all available in my use of the media of confidential information.

I am aware that in the event of a breach of these obligations I will be prosecuted to disciplinary actions, may be deprived of immunity established by the Convention on the Privileges and Immunities of the Eurasian Economic Community, on 31 May 2001, and involved to administrative, civil or criminal liability under the law of the member-state of the Customs Union, where the authority conducting the investigation is situated.

Signature,

Date _____

**Approved by
Decision of the Board
Eurasian Economic Commission
of 7 March 2012 No. 1**

**Regulation on decision-making and preparation of draft decisions
of Eurasian Economic Commission on safeguard, antidumping
and countervailing measures**

This Regulation is aimed at implementing the provisions of the Agreement on the application of safeguard, antidumping and countervailing measures against third countries from 25 January 2008 (hereinafter - Agreement) and other international treaties of member - states of the Customs Union, constituting the legal framework of the Customs Union, and defines the procedure for making decisions and carrying out other activities related to the initiation and conduction of investigations prior to the imposition of safeguard, antidumping and countervailing measures on the single customs territory of the Customs Union (hereinafter - the investigations), as well as the preparation of the draft decisions of the Eurasian Economic Commission (hereinafter - EEC) taken in accordance with the legal regulations constituting the legal framework of the Customs Union on safeguard, antidumping and countervailing measures (hereinafter - the EEC draft decisions on safeguard, antidumping and countervailing measures).

1. Decision-making related to initiation and conduction of investigations

1.1. Decisions to initiate an investigation, including review, the refusal to conduct it, the extension of the investigation and its termination in the absence of grounds for application, review or cancellation of a safeguard, antidumping or countervailing measure shall be taken by order of the Director of the Department for Internal Market Defense of the EEC (hereinafter - the Director of the Department) in coordination with the Board Member (Minister) of the Trade.

1.2. The decision to deny the submission on the application of safeguard, antidumping or countervailing measure is adopted by the Director of the Department.

1.3. Notification to the applicant about the decision to refuse to conduct an investigation or to deny the submission is carried out by a letter signed by the Director of the Department with specification on reasons and grounds for such decisions within the terms provided by the Agreement.

1.4. The results of investigations, including provisional, are prepared in the form of reports signed by the Director of the Department in confidential and non-confidential versions.

1.5. Submissions, notifications and other correspondence with applicants, participants of the investigation, authorized and competent authorities of member - states of the Customs Union, arising from the provisions of the Agreement and other international treaties of member - states of the Customs Union, constituting the legal framework of the Customs Union, are signed by the Director of the Department or the Board Member (Minister) of the Trade (if necessary).

2. Carrying out certain procedural actions prior to the imposition of safeguard, antidumping and countervailing measures against products originating from foreign countries and destined for the single customs territory of the Customs Union

2.1 Notice of receipt of the submission on the application of safeguard, antidumping or countervailing measure shall be sent to the competent authorities of the member-states of the Customs Union within five working days from the date of registration of the submission in the Department with signature of the Director of the Department. Notice of receipt of the submission shall contain the name and classification code CN CU of the product for which submission is filed and the name of the exporting foreign country (exporting foreign countries).

2.2 Notice of initiation of an investigation, including a review, and non-confidential version of the submission are sent within 5 working days from the date of initiation of an investigation by the competent authorities of the member - states of the Customs Union for the purpose of transferring

them to interested parties - participants of the investigation of member - states of the Customs Union.

2.3. Notice of public hearings held pursuant to the Agreement shall be addressed to the competent authorities of the member - states of the Customs Union signed by the Director of the Department no later than 15 calendar days before the public hearings.

2.4. Draft decisions of the EEC on safeguard, antidumping and countervailing measures shall be sent to the authorized bodies of member - states of the Customs Union within the period of investigation specified by the Agreement:

- on the imposition and application of provisional special duty - not later than 45 calendar days from the date of initiation of the investigation;
- on the imposition and application of a safeguard measure - not later than 210 calendar days from the date of initiation of the investigation;
- on the imposition and application of provisional antidumping or countervailing duties - not later than 150 calendar days from the date of initiation of the investigation;
- on the imposition and application of antidumping or countervailing measures - not later than 270 calendar days from the date of commencement of the investigation;
- on the extension of the application of antidumping or countervailing measure for the period of a review - not later than 90 calendar days prior to the expiry of the antidumping or countervailing measure;
- on non-application of a safeguard, antidumping or countervailing measures in accordance with the provisions of Article 40 of the Agreement - not later than 60 calendar days prior to the expiry of the investigation specified by the Agreement.

2.5. Draft decisions of the EEC on safeguard, antidumping or countervailing measures sending to the competent authorities of the member - states of the Customs Union shall be attached by relevant reports prepared on the results of the investigation, including those containing preliminary findings.

2.6. Draft decisions of the EEC on safeguard, antidumping or countervailing measures are considered at the meeting of advisory body on trade issues.

2.7. Draft decisions of EEC are considered at the meeting of the advisory body on trade issues not later than 40 calendar days from the date of the draft decisions' dispatch to the authorized bodies of the member - states of the Customs Union.

2.8. Confidential version of the report of the investigating authority, prepared according to the results of the investigation, including those containing preliminary findings, are sent to the Board Members in the format of a document containing privileged information of limited distribution.

The Board Members have the right to determine one representative from the staff of the EEC for the examination of reports prepared by the investigating authority, according to the results of the investigation, including those containing preliminary findings.

The Board Members and their representatives shall use relevant information in the specified manner and shall be responsible for the disclosure and use for purposes not related to official of such information in accordance with Article 16 of the Treaty on the Eurasian Economic Commission.

Decision

16 May 2012 No. 44, Moscow

On some issues of protection of the domestic market

Board of Eurasian Economic Commission decided:

1. Instructed the Department for Internal Market Defense of the Eurasian Economic Commission to complete in the prescribed manner the investigations carried out by the authorized bodies of the Customs Union members-states, referred to in paragraph 3 of the Customs Union Commission Decision of 17 August 2010 No. 339, and investigations have not been completed before 1 July 2012, after receipt of the documents and materials referred to in paragraph 2 above.
2. Requests Parties to the transfer from the authorized bodies of the Customs Union members-states, referred to in paragraph 1 of this Decision, to the for Internal Market Defense of the Eurasian Economic Commission documents and materials with due protection of confidential information:
 - Investigations carried out by the authorized bodies of the Customs Union countries and not completed before the period specified in paragraph 1 of this decision - until 6 July 2012;
 - Investigation (reviews), completed by the authorized bodies of the Customs Union members-states before 1 July 2012, the decision on which is not taken of the Eurasian Economic Commission - until 6 July 2012;
 - On measures to protect the domestic market, operating in a single customs territory of the Customs Union - before 31 July 2012.
3. Consider the Decision of the Commission of the Customs Union of 23 September 2011 No. 802 "On some issues of safeguard, antidumping and countervailing measures in the common customs territory of the Customs Union" to be repealed from 1 July 2012.
4. This Decision shall enter into force thirty days after the date of its official publication.

Chairman

V.B. Khristenko

Treaty on the Eurasian Economic Union of 29 May 2014

3. Trade Remedies

Article 48. General Provisions on Application of Trade Remedies

1. In order to defend the economic interests of producers in the Union, trade remedies may be applied to products originating in third countries and imported into the customs territory of the Union in the form of safeguard, anti-dumping and countervailing measures, and in the form of other measures in cases provided for in Article 50 of this Treaty.
2. A decision to apply, modify or withdraw a safeguard, anti-dumping or countervailing measure or not to apply a measure is to be taken by the Commission.
3. Safeguards, anti-dumping or countervailing measures shall be applied in accordance with the conditions and procedures set out in Annex No. 8 to this Treaty.
4. A safeguard, anti-dumping or countervailing measure shall be applied pursuant to an investigation carried out by the competent authority designated by the Commission (hereinafter "investigating authority") in accordance with the provisions of Annex No. 8 to this Treaty.
5. Safeguard, anti-dumping and countervailing duties shall be transferred and distributed in accordance with Annex No. 8 to this Treaty.

Article 49. Principles of Application of Safeguard, Anti-Dumping and Countervailing Measures

1. A safeguard measure may be applied to a product if, pursuant to an investigation carried out by the investigating authority, it is determined that such product is being imported into the customs territory of the Union in such increased quantities (absolute or relative to the total volume of domestic production of the like or directly competitive product in the Member States), and under such conditions as to cause or threaten to cause serious injury to a domestic industry of the Member States.
2. An anti-dumping measure may be applied to a product that is considered to be dumped if, pursuant to an investigation carried out by the investigating authority, it is determined that imports of such product into the customs territory of the Union cause or threaten to cause material injury to a domestic industry of the Member States or materially retard the establishment of a domestic industry of the Member States.
3. A countervailing measure may be applied to an imported product that was granted a specific subsidy from an exporting third country on its manufacture, production, export or transportation if, pursuant to an investigation carried out by the investigating authority, it is determined that imports of such product into the customs territory of the Union cause or threaten to cause material injury to a domestic industry of the Member States or materially retard the establishment of a domestic industry of the Member States.
4. For the purposes of application of trade remedies, the domestic industry of the Member States shall be interpreted as referring to domestic producers as a whole of the like products (for the purposes of anti-dumping and countervailing duty investigations) or the like or directly competitive products (for the purposes of safeguard investigations) or those of them whose collective output of such products constitutes a major proportion of the total domestic production in the Member States of the like products or like or directly competitive products, respectively, but not less than 25 percent.

Article 50. Other Trade Defence Instruments

In order to remove negative impact of imports from a Third Party on producers of the Member States, an international treaty establishing a free trade regime between the Union and such Third Party may provide for the right to impose bilateral trade defence instruments other than safeguard, anti-dumping and countervailing measures, including measures with respect to imports of agricultural products.

The decision to apply such measures is to be taken by the Commission.

**Annex No. 8
to the Treaty on the Eurasian Economic Union**

**PROTOCOL
on Application of Safeguard,
Anti-Dumping and Countervailing Measures
with respect to Third Countries**

I. General Provisions

1. This Protocol is elaborated in accordance with Articles 48 and 49 of the Treaty on the Eurasian Economic Union (hereinafter – "Treaty") and lays down provisions pertinent to the application of safeguard, anti-dumping and countervailing measures with respect to third countries for the purpose of defence of the economic interests of producers in the Union.

2. The terms used in this Protocol shall be interpreted to have the following meanings:

"like product" is a product which is completely identical to the product subject to investigation or to the product that may become the product subject to investigation (review) or in the absence of such a product, another product that has characteristics closely resembling those of the product subject to investigation or the product that may become the product subject to investigation (review);

"anti-dumping measure" is a measure to counteract the dumped imports that is applied pursuant to a decision of the Commission through the imposition of an anti-dumping duty, including a provisional anti-dumping duty, or accepting a price undertaking from an exporter;

"anti-dumping duty" is a duty that is applied pursuant to the imposition of an anti-dumping measure and that is levied by the customs authorities of the Member States, irrespective of an import customs duty;

"margin of dumping" is the percentage ratio of the normal value of the product, deducting the export price of this product, to its export price, or the difference between the normal value of the product and its export price in absolute terms;

"import quota" is a restriction on importation of the product into the customs territory of the Union with respect to its quantity and (or) value;

"countervailing measure" is a measure to remove the effect of a specific subsidy of an exporting third country on the domestic industry of the Member States that is applied pursuant to a decision of the Commission through the imposition of a countervailing duty (including a provisional countervailing duty) or accepting voluntary undertakings from an authorised body of the third country granting the subsidy, or the exporter;

"countervailing duty" is a duty that is applied upon the imposition of a countervailing measure and is levied by the customs authorities of the Member States, irrespective of an import customs duty;

"material injury to a domestic industry of the Member States" is a deterioration in the position of the domestic industry of the Member States confirmed by positive evidence, which may manifest itself, in particular, in a decline in production of the like product in the Member States and volume of its sales in the market of the Member States, in a decline in profitability of such product, as well as negative effects on inventories, employment, level of wages in the domestic industry of the Member States and the level of investment in the domestic industry of the Member States;

"directly competitive product" is a product that is comparable to the product subject to investigation or to the product that may become the product subject to investigation (review) in its intended use, application, quality or physical characteristics, as well as other main properties so that a consumer substitutes or is ready to substitute it in the process of consumption for the

product subject to investigation or the product that may become the product subject to investigation (review);

"ordinary course of trade" is an act of purchase and sale of the like product in the market of the exporting third country at a price not below its weighted average cost of production defined on the basis of the weighted average costs of production plus weighted average selling, administrative and general costs;

"payers" are persons defined in accordance with the Customs Code of the Eurasian Economic Union;

"provisional anti-dumping duty" is a duty applied to the imports of a product into the customs territory of the Union in relation to which during the course of an investigation the investigating authority has made a preliminary determination of dumped imports that cause material injury to a domestic industry of the Member States, threaten to cause material injury or materially retard the establishment of a domestic industry of the Member States;

"provisional countervailing duty" is a duty applied to the imports of a product into the customs territory of the Union in relation to which during the course of an investigation the investigating authority has made a preliminary determination of subsidized imports that cause material injury to a domestic industry of the Member States, threaten to cause material injury or materially retard the establishment of a domestic industry of the Member States;

"provisional safeguard duty" is a duty applied to the imports of a product into the customs territory of the Union in relation to which during the course of an investigation the investigating authority has made a preliminary determination of increased imports that cause or threaten to cause serious injury to a domestic industry of the Member States;

"previous period" is a period of 3 calendar years immediately preceding the date of filing the application for the investigation and for which necessary statistical data is available;

"related parties" are persons that meet one or more of the following criteria:

each of these persons is an employee or the head of an organisation established with the participation of another person;

persons are business partners, i.e. are bound by contractual relations, operate for making profit and jointly bear the costs and losses associated with the implementation of joint activities;

persons are employers and employees of one organisation;

one of them directly or indirectly owns, controls or is a nominee shareholder of 5 or more percent of the voting shares or shares of both persons;

one of them directly or indirectly controls the other;

both of them are directly or indirectly controlled by a third person;

together they directly or indirectly control a third person;

persons are in marital relations, kindred relations, or are an adoptive parent and an adoptee, as well as a trustee and a ward.

It is understood that direct control is a possibility for a legal entity or a natural person to determine the decisions made by a legal entity through one or more of the following actions:

exercising of the functions of its executive body;

receiving the right to determine the conditions of the entrepreneurial activity of the legal entity;

disposal of more than 5 percent of the total number of votes that refer to shares that represent authorised (joint) capital (fund) of the legal entity.

Indirect control is understood as a possibility of a legal entity or a natural person to determine the decisions made by a legal entity through a legal entity or a natural person or through a number of legal entities between which there is a direct control.

"serious injury to a domestic industry of the Member States" is overall deterioration of conditions of production of the like or directly competitive product in the Member States confirmed by positive evidence, that consists in significant impairment in the industrial, commercial and financial position of the industry of the Member States, and is generally determined for the previous period;

"safeguard measure" is a measure to counter increased imports into the customs territory of the Union that is applied pursuant to a decision of the Commission through the imposition of an import quota, a special quota or a safeguard duty, including a provisional safeguard duty;

"special quota" is an establishment of a particular volume of a product imported into the customs territory of the Union, within the limit of which the product is imported into the customs territory of the Union without paying a safeguard duty, and in case of exceeding it – upon paying a safeguard duty;

"safeguard duty" is a duty that is applied pursuant to the imposition of a safeguard measure and is levied by the customs authorities of the Member States, irrespective of the import customs duty;

"subsidized imports" are imports of a product into the customs territory of the Union, in the production, exportation and transportation of which a specific subsidy of an exporting third country was used;

"third countries" are countries and (or) groups of countries that are not the Parties to the Treaty, as well as the territories included into the Classifier of Countries of the World that is approved by the Commission;

"granting authority" is a government authority or a local government authority of an exporting third country, or a person who acts pursuant to the instruction of the relevant government authority or a local government authority or is authorised by the relevant government authority or local government authority in accordance with a legal act or based on factual circumstances;

"threat of material injury to a domestic industry of the Member States" is an imminence of material injury to a domestic industry of the Member States that is confirmed by positive evidence;

"threat of serious injury to a domestic industry of the Member States" is an imminence of serious injury to a domestic industry of the Member States that is confirmed by positive evidence;

"export price" is a price that is paid or payable upon importation of a product into the customs territory of the Union.

II. Investigation

1. Investigation Objectives

3. A safeguard, anti-dumping or countervailing measure on imports of a product shall only be imposed pursuant to an investigation carried out to determine:

the existence of increased imports into the customs territory of the Union that cause or threaten to cause serious injury to a domestic industry of the Member States;

the existence of dumped or subsidized imports into the customs territory of the Union that cause or threaten to cause material injury to a domestic industry of the Member States or materially retard the establishment of a domestic industry of the Member States.

2. Investigating Authority

4. The investigating authority shall act within the powers given to it by international treaties and acts constituting the law of the Union.

5. Pursuant to an investigation, the investigating authority shall submit a report to the Commission that contains proposals on necessity of application or extension of the period of application of a safeguard, anti-dumping or countervailing measure, or review, or withdrawal of a safeguard, anti-dumping or countervailing measure, attaching a draft of a relevant decision of the Commission.

6. A review of the safeguard, anti-dumping or countervailing measure shall provide for its modification, withdrawal or liberalization based on the results of such review.

7. In cases specified in paragraphs 15–22, 78–89, 143–153 of this Protocol the investigating authority until the end of the investigation shall submit a report to the Commission that contains proposals on imposition or application of provisional safeguard, anti-dumping or countervailing measure attaching a draft of a relevant decision of the Commission.

8. Submission of the evidence and information to the investigating authority as well as written correspondence with the investigating authority shall be maintained in the Russian language, and original documents that are prepared in a foreign language shall be accompanied with a certified translation into the Russian language.

III. Safeguard Measures

1. General Principles of Application of Safeguard Measure

9. A safeguard measure shall be applied to a product imported into the customs territory of the Union from an exporting third country, irrespective of the country of its origin, except:

1) a product originating in a developing or a least developed third country benefiting from the tariff preferences system of the Union as long as the share of imports of the product subject to investigation from this country does not exceed 3 percent of total imports of the product subject to investigation into the customs territory of the Union, provided that the total share of imports from developing and least developed countries, whose individual share of imports of the product subject to investigation does not exceed 3 percent of total imports of the product subject to investigation into the customs territory of the Union, collectively account for not more than 9 percent of total imports of the product subject to investigation into the customs territory of the Union;

2) a product originating in a Participating State of the Commonwealth of Independent States, which is a party to the Treaty on a Free Trade Area of October 18, 2011, provided that conditions specified in Article 8 of the Treaty on a Free Trade Area of October 18, 2011 are fulfilled.

10. The Commission shall take a decision to extend the safeguard measure to a product originating in a developing or a least developed third country and excluded from the application of a safeguard measure in accordance with paragraph 9 of this Protocol if, pursuant to a review carried out by the investigating authority in accordance with paragraphs 31, 33 or 34 of this Protocol, it is determined that the share of imports of a product originating in this developing or least developed third country exceeds the indicators specified in paragraph 9 of this Protocol.

11. The Commission shall take a decision to extend the safeguard measure to a product originating in a Participating State of the Commonwealth of Independent States, which is a party to the Treaty on a Free Trade Area of October 18, 2011 and is excluded from the application of a safeguard measure in accordance with paragraph 9 of this Protocol, if, pursuant to a review carried out by the investigating authority in accordance with paragraphs 31, 33 or 34 of this Protocol, it is determined that the conditions specified in Article 8 of the Treaty on a Free Trade Area of October 18, 2011 are no longer fulfilled.

2. Determination of Serious Injury or Threat Thereof to Domestic Industry of Member States Caused by Increased Imports

12. For the purposes of determination of serious injury or threat thereof to a domestic industry of the Member States caused by increased imports into the customs territory of the Union, in the course of an investigation the investigating authority shall evaluate all factors of an objective and quantifiable nature which have a bearing on the economic situation of the domestic industry of the Member States, including the following:

- 1) the rate and amount of the increase in imports of the product subject to investigation in absolute and relative terms to domestic production or consumption of the like or directly competitive product in the Member States;
- 2) the share of the imported product subject to investigation in the total volume of sales of this product and the like or directly competitive product in the market of the Member States;
- 3) the level of prices for the imported product subject to investigation in comparison with the level of prices for the like or directly competitive product produced in the Member States;
- 4) changes in the volume of sales of the like or directly competitive product produced in the Member States in the market of the Member States;
- 5) changes in the volume of production of the like or directly competitive product, productivity, utilization of capacity, amount of profits and losses and employment level in the domestic industry of the Member States.

13. Serious injury or threat thereof to a domestic industry of the Member States caused by increased imports shall be determined pursuant to an examination of all relevant evidence and information available to the investigating authority.

14. Along with increased imports, the investigating authority shall examine other known factors which at the same time are causing or threatening to cause serious injury to the domestic industry of the Member States. Such injury must not be attributed to the serious injury or threat thereof caused by increased imports into the customs territory of the Union.

3. Imposition of Provisional Safeguard Duty

15. In critical circumstances where delay in application of a safeguard measure would cause damage to a domestic industry of the Member States which it would be difficult to repair, the Commission, before the conclusion of the respective investigation, may take a decision to apply a provisional safeguard duty for a period not exceeding 200 calendar days on the basis of a preliminary determination by the investigating authority that there is clear evidence that increased imports of the product subject to investigation have caused or are threatening to cause serious injury to a domestic industry of the Member States. The investigation shall be continued in order to obtain the final determination of the investigating authority.

16. The investigating authority shall notify in writing the authorised body of the exporting third country as well as other interested parties known to it of the possible imposition of a provisional safeguard duty.

17. At the request of the authorised body of the exporting third country to hold consultations on the imposition of a provisional safeguard duty such consultations shall be initiated after the decision to apply a provisional safeguard duty is taken by the Commission.

18. In cases where, pursuant to an investigation, the investigating authority determines that there are no grounds for the imposition of a safeguard measure, or the decision not to apply a safeguard measure is taken in accordance with paragraph 272 of this Protocol, the amounts of the provisional safeguard duty shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall provide timely information to the customs authorities of the Member States on the absence of grounds for the imposition of a safeguard measure, or on the decision not to apply a safeguard measure taken by the Commission.

19. In cases where, pursuant to an investigation, the decision to apply a safeguard measure (including in the form of an import or special quota) is taken, period of application of the provisional safeguard duty shall be counted as part of the overall period of application of the safeguard measure, and from the date of entry into force of the decision to apply the safeguard measure taken pursuant to an investigation, the amounts of provisional safeguard duty shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol, taking into account the provisions of paragraphs 20 and 21 of this Protocol.

20. In cases where, pursuant to an investigation, it is considered reasonable to impose a safeguard duty at a rate less than the rate of the provisional safeguard duty, the amounts of the provisional safeguard duty equal to the amount of the safeguard duty calculated on the basis of the established safeguard duty rate shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

The amounts of the provisional safeguard duty which exceed the amount of the safeguard duty calculated on the basis of the established safeguard duty rate shall be refunded to a payer in accordance with the procedure specified in the Annex to this Protocol.

21. In cases where, pursuant to an investigation, it is considered reasonable to impose a safeguard duty at a rate higher than the rate of the provisional safeguard duty, the difference between the amount of the provisional safeguard duty and the amount of the safeguard duty shall not be collected.

22. The decision to impose of a provisional safeguard duty, as a rule, shall be taken not later than 6 months from the date of the initiation of the investigation.

4. Application of Safeguard Measure

23. A safeguard measure shall be applied pursuant to a decision of the Commission to the extent and during a period necessary to prevent or remedy serious injury or threat thereof to a domestic industry of the Member States and to facilitate the adjustment of a domestic industry of the Member States to changing economic conditions.

24. In cases where a safeguard measure is applied in the form of an import quota, the volume of such quota shall not be lower than the average annual volume of imports of the product subject to investigation (in quantitative or in value terms) for the previous period, except in cases where a lower volume of import quota is necessary to remedy serious injury or threat thereof to a domestic industry of the Member States.

25. In cases where an import quota is allocated among exporting third countries, those of them having an interest in supplying the product subject to investigation to the customs territory of the Union shall be provided an opportunity to conduct consultations on the allocation of import quota among them.

26. In cases where the conduct of consultations specified in paragraph 25 of this Protocol is not practicable or no agreement on such allocation is reached in the consultations, an import quota shall be allocated among exporting third countries having an interest in exporting the product subject to investigation to the customs territory of the Union based upon the proportions of this product, imported from these third countries during the previous period, of the total quantity or value of imports of such product.

Any special factors which may have affected or may be affecting the trade in the product shall be taken into account.

27. In cases where imports of the product subject to investigation from certain exporting third countries have increased in disproportionate percentage in relation to the total increase of imports of such product within 3 years preceding the date of filing the application for the investigation, the Commission may allocate an import quota among such exporting third countries taking into

account absolute and relative increase in imports of this product into the customs territory of the Union from such exporting third countries.

The provisions of this paragraph shall be applied only in cases where the investigating authority has determined the existence of serious injury to a domestic industry of the Member States.

28. The procedure for application of a safeguard measure in the form of an import quota shall be determined by the Commission. In cases where such a decision provides for import licensing, licences shall be issued in accordance with the procedure specified in Article 46 of the Treaty.

29. In cases where a safeguard measure is applied in the form of a special quota, determination of its volume, allocation and application of such quota shall be carried out in accordance with the procedure specified for import quota in paragraphs 24–28 of this Protocol.

5. Duration and Review of Safeguard Measure

30. The duration of a safeguard measure shall not exceed 4 years, except for the case where the duration of such measure is extended in accordance with paragraph 31 of this Protocol.

31. The duration of a safeguard measure specified in paragraph 30 of this Protocol may be extended by a decision of the Commission if, pursuant to a review carried out by the investigating authority, it is determined that it is necessary to extend the duration of a safeguard measure to remove serious injury to a domestic industry of the Member States or threat thereof and there is evidence that a domestic industry of the Member States is adjusting to the changing economic conditions.

32. If the Commission takes a decision to extend a safeguard measure, such safeguard measure shall not be more restrictive than the safeguard measure which is in force on the date when this decision is taken.

33. In cases where the duration of a safeguard measure exceeds 1 year, the Commission shall progressively liberalize such safeguard measure at regular intervals during the period of application.

In cases where the duration of a safeguard measure exceeds 3 years, not later than the mid-term of the measure, the investigating authority shall carry out a review, pursuant to which the safeguard measure may be maintained, liberalized or withdrawn. For the purposes of this paragraph, liberalization of a safeguard measure shall mean an increase in the volume of an import quota or a special quota, or a reduction of a safeguard duty rate.

34. In addition to a review specified in paragraph 33 of this Protocol, at the initiative of the investigating authority or upon an application by an interested party, a review may be carried out in order to:

1) determine whether it is reasonable to modify, liberalize or withdraw a safeguard measure due to changed circumstances, including the clarification of the product subject to the safeguard measure if there are grounds to believe that such a product cannot be produced in the Union in the course of application of this safeguard measure;

2) determine the share of developing or least developed third countries in the total volume of imports of the product into the customs territory of the Union;

3) determine for the Participating States of the Commonwealth of Independent States which are parties to the Treaty on a Free Trade Area of October 18, 2011 whether the criteria established by Article 8 of the mentioned Treaty are fulfilled.

35. The investigating authority may accept an application for a review for the purposes specified in subparagraph one of paragraph 34 of this Protocol if at least 1 year has elapsed since the imposition of a safeguard measure.

36. The provisions regarding the carrying out of investigations shall be applied *mutatis mutandis* to reviews.

37. Total period of application of a safeguard measure, including period of application of a provisional safeguard duty and period for which the duration of a safeguard measure is extended, shall not exceed 8 years.

38. No safeguard measure shall be applied again to the import of a product which has been subject to a safeguard measure for a period of time equal to the period of duration of the previous safeguard measure. The period of such non-application of a safeguard measure shall be not less than 2 years.

39. A safeguard measure with a duration of 180 calendar days or less, notwithstanding the provisions of paragraph 38 of this Protocol, may be applied again to the same product if at least 1 year has elapsed since the date of imposition of a previous safeguard measure and a safeguard measure has not been applied to such product more than twice in the five-year period preceding the date of imposition of a new safeguard measure.

IV. Anti-Dumping Measures

1. General Principles of Application of Anti-Dumping Measure

40. A product shall be considered as being dumped if the export price of the product is less than its normal value.

41. The period of investigation for which data is examined for the purpose of determining the existence of dumped imports shall be established by the investigating authority. This period should normally be 12 months preceding the date of filing the application for investigation, for which the statistical data is available, but in any case no less than 6 months.

2. Determination of Margin of Dumping

42. The margin of dumping shall be determined by the investigating authority on the basis of a comparison of:

- 1) a weighted average normal value of the product with a weighted average export price of the product;
- 2) normal value of the product with export prices of the product on a transaction-to-transaction basis;
- 3) weighted average normal value of the product with prices of individual export transactions provided that prices of the product differ significantly among different purchasers, regions or time periods.

43. The comparison of export price and normal value shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time.

44. In comparing export price with its normal value allowances shall be made for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.

The investigating authority shall ensure that the allowances for the aforementioned differences do not duplicate each other and do not distort the result of the comparison of export price and normal value. The investigating authority may request the interested parties to provide information necessary to ensure a fair comparison of export price of the product with its normal value.

45. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting third country or when, because of the low volume of sales of the like product in the ordinary course of trade in the domestic market of the exporting third country or

because of the particular market situation in the exporting third country, such sales do not permit a proper comparison of export price of the product and the price of the like product sold in the market of exporting third country, export price of the product shall be compared either with a comparable price of the like product imported from the exporting third country into another third country, (provided that the price of the like product is representative), or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

46. In case where the product is imported into the customs territory of the Union from a third country which is not its country of origin, the export price for such product shall be compared with the comparable price of the like product in the domestic market of the third country.

The export price of the product may be compared with the comparable price of the like product in the country of origin if the product is merely transhipped through the third country from which it is exported to the customs territory of the Union, or it is not produced in this third country, or there is no comparable price for the like product in this third country.

47. In the case where the comparison of the export price of the product with its normal value requires a conversion of currencies, such conversion should be made using the official rate of exchange on the date of sale.

In case where a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used.

The investigating authority shall ignore fluctuations in exchange rates and in the course of an investigation shall allow exporters at least 60 calendar days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

48. The investigating authority shall, as a rule, determine an individual margin of dumping for each known exporter and (or) producer of the product who has provided necessary information permitting the determination of an individual margin of dumping.

49. In case where the investigating authority concludes that it is impracticable to determine an individual margin of dumping for each known exporter and (or) producer of the product due to the total number of exporters, producers or importers of the product, variety of types of products involved, or any other reason, it may limit the determination of an individual margin of dumping to a reasonable number of interested parties or it may determine the margin of dumping in relation to samples of the product originating in each exporting third country which are statistically valid on the basis of information available to the investigating authority and which can be investigated without impeding the investigation.

The selection of interested parties for the purposes of limiting the determination of individual margins of dumping shall preferably be made by the investigating authority in consultation with and with the consent of the respective exporters, producers and importers of the product subject to investigation.

In case where the investigating authority has limited the determination in accordance with this paragraph, it shall also determine an individual margin of dumping for any foreign exporter or foreign producer not initially selected who submits necessary information permitting the determination of an individual margin of dumping in time for that information to be considered, except where the number of foreign exporters and (or) foreign producers is so large that individual examinations may prevent the timely conclusion of the investigation by the investigating authority.

Voluntary responses of such foreign exporters and (or) foreign producers shall not be discouraged by the investigating authority.

50. In case where the investigating authority has limited the determination of an individual margin of dumping, as provided for in paragraph 49 of this Protocol, the margin of dumping calculated for foreign exporters or foreign producers of the dumped product, not selected for the determination of an individual margin of dumping, who express their consent to be selected and submit necessary information within the established time period, shall not exceed the weighted

average margin of dumping determined for those selected foreign exporters or foreign producers of the dumped product.

51. If exporters or producers of the product subject to investigation do not submit necessary information to the investigating authority in a required form and within the established time period, or if submitted information is not verifiable or is inaccurate, the investigating authority may determine the margin of dumping on the basis of the facts available.

52. Along with the determination of an individual margin of dumping for each known exporter and (or) producer of the product who has submitted necessary information permitting the determination of an individual margin of dumping, the investigating authority may determine a single margin of dumping for all other exporters and (or) producers of the product subject to investigation based on the highest margin of dumping determined during the course of the investigation.

3. Determination of Normal Value

53. The investigating authority shall determine normal value on the basis of prices for the like product sold in the ordinary course of trade in the domestic market of the exporting third country during the period of investigation to buyers who are not related to the producers and exporters that are residents of this third country, for the use on the customs territory of the exporting third country.

For the purposes of determination of normal value, prices for the like product sold in the domestic market of the exporting third country to buyers who are related to the producers and exporters that are residents of this third country may be taken into account in cases where it is determined that the relationship does not affect the pricing policy of the foreign producer and (or) exporter.

54. Volume of sales of the like product in the ordinary course of trade in the domestic market of the exporting third country shall be considered as sufficient for the determination of the normal value, if such volume constitutes not less than 5 percent of the total volume of exports of the product to the customs territory of the Union from the exporting third country.

A lower volume of sales of the like product in the ordinary course of trade should be acceptable for the determination of the normal value if the evidence demonstrates that such a volume is sufficient to provide for a proper comparison of the export price of the product with the price for the like product in the ordinary course of trade.

55. For the purpose of determination of the normal value of the product in accordance with paragraph 53 of this Protocol, the price for the product sold to buyers in the domestic market of the exporting third country shall be the weighted average price of the like product sold during the period of investigation or the price for the product under each individual transaction within this period.

56. Sale of the like product in the domestic market of the exporting third country or from the exporting third country to another third country at prices below per unit costs of production of the like product plus administrative, selling and general costs may be disregarded in the determination of the normal value only in case where the investigating authority establishes that within the period of investigation such sale are made in substantial quantities and at prices which do not provide for the recovery of all costs within this period.

57. In case where the price of the like product, which is below per unit costs of production plus administrative, selling and general costs at the time of sale, is above the weighted average per unit costs of production plus administrative, selling and general costs for the period of investigation, such price shall be considered to provide for recovery of all costs within the period of investigation.

58. Sale of the like product at prices below per unit costs of production plus administrative, selling and general costs is considered to be made in substantial quantities in case where the weighted average price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs of production of the like product plus

administrative, selling and general costs, or the volume of sales at prices below such per unit costs represents not less than 20 percent of the volume sold in transactions under consideration for the determination of the normal value.

59. Per unit costs of production of the like product plus administrative, selling and general costs shall be calculated on the basis of records submitted by the exporter or producer of the product, provided that such records are in accordance with the generally accepted accounting principles and rules of the exporting third country and completely reflect the costs associated with the production and sale of the product.

60. The investigating authority shall consider all available evidence on the proper allocation of costs of production, administrative, selling and general costs, including data submitted by the exporter or producer of the product subject to investigation, provided that such allocation of costs has been normally utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

61. Costs of production, administrative, selling and general costs shall be adjusted for non-recurring items of cost which benefit production, or for circumstances in which costs during the period of investigation are affected by start-up operations. Such adjustments shall reflect the costs at the end of the start-up period or, in case where the start-up period exceeds the period of investigation, at the most recent stage of the start-up period which is covered by the investigation period.

62. The amounts for administrative, selling and general costs and for profits, which are relevant to the industry, shall be determined on the basis of actual data pertaining to production and sales in the ordinary course of trade of the like product, which is provided by the exporter or producer of the product subject to investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- 1) the actual amounts incurred and realized by the exporter or producer of the product subject to investigation in respect of production and sales in the domestic market of the exporting third country of the same category of products;
- 2) the weighted average of the actual amounts incurred and realized by other exporters or producers in respect of production and sales of the like product in the domestic market of the exporting third country;
- 3) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same category in the domestic market of the exporting third country.

63. In case of dumped imports from an exporting third country in which the prices in the domestic market are directly regulated by the State or in which the State has a monopoly of its foreign trade, the normal value of the product may be determined on the basis of the price or constructed value of the like product in an appropriate third country which is comparable for the purposes of the investigation with the exporting third country, or on the basis of the price of the like product when exported from such a third country.

In case where the determination of normal value in accordance with this paragraph is not possible, the normal value of the product may be determined on the basis of the price paid or payable for the like product on the customs territory of the Union, adjusted for profits.

4. Determination of Export Price

64. The export price of a product shall be determined on the basis of information on sales of the product during the period of investigation.

65. In case where there is no information on the export price of the dumped product or where the investigating authority has reasonable doubts concerning the reliability of the information on the export price of this product because the exporter and the importer are related parties, including the relationship between each of them and the third party, or when there is a restrictive

business practice in the form of a compensatory arrangement in relation to the export price for such a product, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition as imported into the customs territory of the Union, on such basis as the investigating authority may determine. For the purposes of comparison of the export price of the product with its normal value, allowances should be made for costs, including customs duties and taxes, incurred between importation and resale, and for profits.

5. Determination of Injury to Domestic Industry of Member States Caused by Dumped Imports

66. For the purposes of this section, injury to a domestic industry of the Member States shall mean material injury to a domestic industry of the Member States, threat of material injury or material retardation of the establishment of a domestic industry in the Member States.

67. Injury to the domestic industry of the Member States caused by the dumped imports shall be determined on the basis of the results of an examination of the volume of the dumped imports, the effect of such imports on prices in the domestic market of the Member States for the like product and the impact of such imports on domestic producers of the like product in the Member States.

68. The period of investigation, for which the evidence is examined for the purposes of determination of injury to the domestic industry of the Member States caused by dumped imports, shall be established by the investigating authority.

69. With regard to the examination of the volume of the dumped imports, the investigating authority shall consider whether there has been a significant increase in dumped imports of the product subject to investigation, either in absolute terms or relative to production or consumption of the like product in the Member States.

70. With regard to the examination of the effect of the dumped imports on prices for the like product in the domestic market of the Member States, the investigating authority shall consider whether:

- 1) there has been a significant price undercutting by the dumped imports as compared with the price of the like product in the domestic market of the Member States;
- 2) the dumped imports have depressed prices of the like product in the market of the Member States to a significant degree;
- 3) the dumped imports have prevented price increases for the like product in the market of the Member States, which would have occurred in the absence of such imports, to a significant degree.

71. In cases where imports of a product from more than one exporting third country into the customs territory of the Union are simultaneously subject to anti-dumping investigations, the investigating authority may cumulatively assess the effects of such imports only if it determines the following:

- 1) the margin of dumping established in relation to the imports from each exporting third country is more than *de minimis*, and the volume of imports from each exporting third country is not negligible as defined in paragraph 223 of this Protocol;
- 2) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product produced in the Member States.

72. The examination of the impact of the dumped imports on the domestic industry of the Member States shall include an evaluation of all relevant economic factors having a bearing on the state of the domestic industry of the Member States, including:

the degree of recovery in the economic position of the domestic industry of the Member States after the impact of the prior dumped or subsidized imports;

actual or potential decline in output, sales, market share in the market of the Member States, profits, productivity, return on investments, or utilization of capacity;

factors affecting prices of the product in the market of the Member States;

the magnitude of the margin of dumping;

actual or potential negative effect on growth rate of production, inventories, employment, wages, ability to raise investments and the financial state.

One or several factors cannot give decisive guidance for the purposes of determination of injury to the domestic industry of the Member States.

73. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry of the Member States shall be based on examination of all relevant evidence and information before the investigating authority.

74. Along with dumped imports, the investigating authority shall also examine any other known factors which at the same time are causing injury to the domestic industry of the Member States.

Factors which may be considered as relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices, developments in technology, as well as the export performance and productivity of the domestic industry of the Member States.

The injury caused by these other factors to the domestic industry of the Member States must not be attributed to the injury to the domestic industry of the Member States caused by the dumped imports into the customs territory of the Union.

75. The effect of the dumped imports on the domestic industry of the Member States shall be assessed in relation to the domestic production of the like product in the Member States when available data permit the separate identification of the production of the like product on the basis of such criteria as the production process, producers' sales of the like product and profits.

In cases where such available data does not permit the separate identification of the production of the like product, the effects of the dumped imports on the domestic industry of the Member States shall be assessed in relation to the production of the narrowest group or range of products, which includes the like product, for which the necessary data is available.

76. In making a determination of a threat of material injury to a domestic industry of the Member States caused by dumped imports, the investigating authority should consider all the available factors, including the following:

- 1) a rate of increase of dumped imports indicating the likelihood of further increased importation;
- 2) sufficient freely disposable, or an imminent increase in, capacity of the exporter of the dumped product which indicates the likelihood of increased dumped imports of this product, taking into account the availability of other export markets to absorb any additional exports of this product;
- 3) the level of prices for the product subject to investigation, if such level of prices may have a depressing or suppressing effect on domestic prices for the like product in the Member States, and would likely further increase demand for the product subject to investigation;
- 4) the exporter's inventories of the product subject to investigation.

77. The determination of a threat of material injury to a domestic industry of the Member States shall be made in cases where during the course of the investigation, pursuant to an examination of the factors set out in paragraph 76 of this Protocol, the investigating authority concluded that

further dumped imports are imminent and that, unless an anti-dumping measure is taken, material injury to the domestic industry of the Member States caused by such imports would occur.

6. Imposition of Provisional Anti-Dumping Duty

78. In case where the evidence received by the investigating authority before the conclusion of the investigation indicates that there are dumped imports and injury caused by dumped imports to a domestic industry of the Member States, the Commission, on the basis of the report specified in paragraph 7 of this Protocol, shall take a decision to apply an anti-dumping measure by way of imposing a provisional anti-dumping duty to prevent injury from being caused to the domestic industry of the Member States by the dumped imports during the investigation.

79. A provisional anti-dumping duty shall not be imposed sooner than 60 calendar days from the date of the initiation of an investigation.

80. The amount of a provisional anti-dumping duty shall be sufficient to remove injury to the domestic industry of the Member States, being not greater than the provisionally estimated margin of dumping.

81. In cases where the amount of a provisional anti-dumping duty is equal to the amount of the provisionally estimated margin of dumping, the period of application of the provisional anti-dumping duty shall not exceed 4 months, except for the case where this period is extended to 6 months upon the request of exporters representing a major percentage of the dumped imports subject to investigation.

82. In case where the amount of a provisional anti-dumping duty is less than the provisionally estimated margin of dumping, the period of application of the provisional anti-dumping duty shall not exceed 6 months, but for the case when this period is extended to 9 months upon the request of the exporters representing a major percentage of the dumped imports of the product subject to investigation.

83. In case where the investigating authority determines, pursuant to an investigation, that there are no grounds for imposition of an anti-dumping measure, or a decision not to apply an anti-dumping measure is taken in accordance with paragraph 272 of this Protocol, the amounts of the provisional anti-dumping duty shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall provide timely information to the customs authorities of the Member States on the absence of grounds for the imposition of an anti-dumping measure, or on the decision not to apply an anti-dumping measure taken by the Commission.

84. In case where, pursuant to an investigation, the decision to apply an anti-dumping measure is taken on the basis of a threat of material injury to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States, the amounts of the provisional anti-dumping duty shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

85. In case where, pursuant to an investigation, the decision to apply an anti-dumping measure is taken on the basis of material injury to a domestic industry of the Member States or a threat thereof (provided that the non-imposition of a provisional anti-dumping duty would have led to a determination of material injury to the domestic industry of the Member States), from the date of entry into force of the decision to apply the anti-dumping measure, the amounts of the provisional anti-dumping duty shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol, taking into account the provisions of paragraphs 86 and 87 of this Protocol.

86. In case where, pursuant to an investigation, it is considered appropriate to impose an anti-dumping duty at a rate less than the provisional anti-dumping duty, the amounts of the provisional anti-dumping duty equal to the amount of the anti-dumping duty calculated on the basis of the established anti-dumping duty rate shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

The amounts of the provisional anti-dumping duty which exceed the amount of the anti-dumping duty calculated on the basis of the established anti-dumping duty rate shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

87. In case where, pursuant to an investigation, it is considered reasonable to impose an anti-dumping duty at a rate higher than the provisional anti-dumping duty, the difference between the anti-dumping duty and the provisional anti-dumping duty shall not be collected.

88. A provisional anti-dumping duty shall be applied subject to the simultaneous continuation of the investigation.

89. The decision to impose of a provisional anti-dumping duty, as a rule, shall be taken not later than 7 months from the date of initiation of the investigation.

7. Acceptance of Price Undertakings from Exporter of Product Subject to Investigation

90. The investigating authority may suspend or terminate the investigation without imposition of a provisional anti-dumping duty or an anti-dumping duty upon receipt of price undertakings from an exporter of the product subject to investigation to revise its prices for this product or to cease exports to the customs territory of the Union at prices less than its normal value (if there are parties related to the exporter in the Member States, applications indicating their support of the undertakings shall also be required from these parties), if the investigating authority concludes that these undertakings will remove the injury caused by dumped imports, and the Commission takes a decision to accept them.

The level of prices for the product subject to such undertakings shall not be higher than necessary to offset the margin of dumping.

The price increase may be less than the margin of dumping, if such price increase is adequate to remove the injury to the domestic industry of the Member States.

91. The decision to accept price undertakings shall not be taken by the Commission until the investigating authority has made a preliminary affirmative determination of dumped imports and injury caused by such imports to a domestic industry of the Member States.

92. The decision to accept price undertakings shall not be taken by the Commission if the investigating authority concludes that their acceptance is impractical because the number of actual or potential exporters of the product subject to investigation is too great, or for other reasons.

Where practicable, the investigating authority shall provide to the exporters the reasons why the acceptance of their undertakings was considered as impractical, and shall give the exporters an opportunity to make comments thereon.

93. The investigating authority shall send to each exporter from whom price undertakings have been accepted a request for a non-confidential version thereof so that it may be made available to interested parties.

94. Price undertakings may be suggested to the exporter by the investigating authority, but no exporter shall be forced to enter into such undertakings.

95. In cases where the Commission takes a decision to accept price undertakings, the anti-dumping investigation may be continued upon request of the exporter of the product or if the investigating authority so decides.

In cases where, pursuant to an investigation, the investigating authority makes a negative determination of dumped imports or injury caused by such imports to a domestic industry of the Member States, the price undertakings from the exporter shall automatically lapse, except in cases where such a determination is due in large part to the existence of such undertakings. In cases where such a determination is due in large part to the existence of price undertakings, the Commission may take a decision that such undertakings shall be in force for a necessary period of time.

96. In cases where, pursuant to an investigation, the investigating authority makes an affirmative determination of dumped imports and injury caused by such imports to a domestic industry of the Member States, the price undertakings from the exporter shall remain in force, consistent with their terms and the provisions of this Protocol.

97. The investigating authority may require the exporter from whom price undertakings have been accepted by the Commission to provide information relevant to the fulfilment of the price undertakings and to permit verification of this information.

Failure to provide requested information within the time period established by the investigating authority and to permit verification of this information shall be regarded as violation of the price undertakings by the exporter.

98. In case of violation or withdrawal of price undertakings by the exporter, the Commission may take a decision to apply an anti-dumping measure by way of imposing a provisional anti-dumping duty (if the investigation has not been concluded yet), or an anti-dumping duty (if the final results of the investigation indicate that there are grounds for such imposition).

In case of violation of price undertakings by an exporter from which such undertakings were accepted, the exporter shall be given an opportunity to make comments on such violation.

99. The decision to accept price undertakings taken by the Commission shall set out a provisional anti-dumping duty rate or an anti-dumping duty rate which may be imposed in accordance with paragraph 98 of this Protocol.

8. Imposition and Application of Anti-Dumping Duty

100. An anti-dumping duty shall be applied to a product from all exporters found to be dumped and causing injury to a domestic industry of the Member States (except for a product from those exporters from which price undertakings have been accepted by the Commission in accordance with paragraphs 90–99 of this Protocol).

101. The amount of an anti-dumping duty shall be adequate to remove the injury to the domestic industry of the Member States but shall not exceed the margin of dumping.

The Commission may take a decision to impose an anti-dumping duty which is less than the margin of dumping if such duty is adequate to remove the injury to the domestic industry of the Member States.

102. The Commission shall establish an individual anti-dumping duty rate in respect of the product from each exporter or producer of the imported dumped product for whom the individual margin of dumping has been determined.

103. Along with an individual margin of dumping indicated in paragraph 102 of this Protocol, the Commission shall determine a single anti-dumping duty rate on the product from all other exporters or producers of the product from the exporting third country for whom the individual margin of dumping has not been determined, on the basis of the highest margin of dumping established during the course of the investigation.

104. An anti-dumping duty may be applied to products which were placed, not more than 90 days prior to the date of imposition of a provisional anti-dumping duty, under a customs procedure that is conditional on the payment of anti-dumping duties if the investigating authority, pursuant to an investigation, has simultaneously determined for this product the following:

1) there is a history of dumped imports which caused injury or that the importer was, or should have been, aware that the exporter supplies a product at a price less than its normal value and that such imports would cause injury to a domestic industry of the Member States;

2) the injury to a domestic industry of the Member States is caused by massive dumped imports in a relatively short time which, in light of the timing and the volume and other circumstances (including a rapid build-up of inventories of the imported product), is likely to seriously undermine

the remedial effect of the anti-dumping duty to be imposed, provided that the importers of this product have been given an opportunity to comment before the conclusion of the investigation.

105. After the date of the initiation of the investigation, the investigating authority shall publish a notice on possible application in accordance with paragraph 104 of this Protocol of an anti-dumping duty to the product subject to investigation in the official sources specified in the Treaty.

The decision to publish such a notice shall be taken by the investigating authority upon request of a domestic industry of the Member States which contains sufficient evidence that the conditions specified in paragraph 104 of this Protocol are fulfilled, or at the initiative of the investigating authority in cases where such evidence is available to the investigating authority.

Anti-dumping duty shall not be applied to products which were placed under a customs procedure that is conditional on the payment of anti-dumping duties before the official publication of a notice specified in this paragraph.

106. The national legislations of the Member States may establish additional means of notification to interested parties of possible application of an anti-dumping duty in accordance with paragraph 104 of this Protocol.

9. Duration and Review of Anti-Dumping Measure

107. An anti-dumping measure shall be applied pursuant to a decision of the Commission to the extent and as long as necessary to remove injury to a domestic industry of the Member States caused by dumped imports.

108. The duration of an anti-dumping measure shall not exceed 5 years from the date of the application of such measure or from the date of the conclusion of a review that was carried out on the basis of a change in circumstances and concerned both the examination of dumped imports and the injury to a domestic industry of the Member States caused by the dumped imports, or from the date of the conclusion of an expiry review.

109. An expiry review shall be initiated upon a written application filed in accordance with paragraphs 186–198 of this Protocol, or at the initiative of the investigating authority.

An expiry review shall be initiated when the application contains evidence that the dumped imports and the injury to the domestic industry of the Member States would be likely to recur or continue if the anti-dumping measure were removed.

The application for an expiry review shall be filed not later than 6 months prior the expiry of the anti-dumping measure.

A review shall be initiated prior to the expiry of an anti-dumping measure and concluded within 12 months from the date of the initiation of the review.

Prior to the conclusion of a review carried out in accordance with this paragraph, the period of application of the anti-dumping measure shall be extended pursuant to a decision of the Commission. During the period for which the application of the respective anti-dumping measure is extended, in accordance with the procedure established for the collection of provisional anti-dumping duties, anti-dumping duties shall be levied at the rate established for the anti-dumping measure, the duration of which is subject to extension.

In cases where, pursuant to an expiry review, the investigating authority establishes that there are no grounds for the application of an anti-dumping measure, or the decision not to apply an anti-dumping measure is taken in accordance with paragraph 272 of this Protocol, the amounts of the anti-dumping duty levied in accordance with the procedure established for the collection of provisional anti-dumping duties, during the period for which the application of the anti-dumping measure is extended, shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall provide timely information to the customs authorities of the Member States on the absence of grounds for the application of an anti-dumping measure, or on the decision not to apply an anti-dumping measure taken by the Commission.

Duration of an anti-dumping measure is to be extended by the Commission in cases where, pursuant to an expiry review, the investigating authority establishes the likelihood of recurrence or continuation of dumped imports and injury to the domestic industry of the Member States. From the date of entry into force of the decision of the Commission to extend the period of application of an anti-dumping measure, the amounts of anti-dumping duties levied in accordance with the procedure established for the collection of provisional anti-dumping duties, during the period for which the application of the anti-dumping measure was extended, shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

110. For the purposes of determination whether the continued application of an anti-dumping measure is appropriate and/or for the purposes of reviewing the measure due to the changed circumstances (including a review of an individual anti-dumping duty rate) a review may be initiated upon an application by an interested party or at the initiative of the investigating authority, provided that at least 1 year has elapsed since the imposition of an anti-dumping measure.

Depending on the purposes of filing an application for a review such an application shall include evidence that due to changed circumstances:

continued application of the anti-dumping measure is no longer necessary to offset dumping and remove injury to the domestic industry of the Member States caused by the dumped imports;

existing amount of an anti-dumping measure exceeds the amount sufficient to offset dumping and remove injury to the domestic industry of the Member States caused by the dumped imports;

existing anti-dumping measure is insufficient to offset dumping and remove injury to the domestic industry of the Member States caused by the dumped imports.

A review carried out in accordance with this paragraph shall be concluded within 12 months from the date of the initiation of the review.

111. A review may also be carried out for the purposes of determining an individual margin of dumping for an exporter or producer who did not export the product subject to investigation during the original period of investigation. Such a review may be initiated by the investigating authority in cases where such exporter or producer files an application which includes evidence that the exporter or producer of the product is not related to the exporters or producers subject to the anti-dumping measure, and that this exporter or producer exports the product subject to investigation to the customs territory of the Union or is bound by contractual obligations to export substantial volumes of this product to the customs territory of the Union of such kind that their termination or withdrawal will lead to significant losses or substantial penalties for this exporter or producer of the product.

While a review is being carried out for the purposes of determining an individual margin of dumping for an exporter or producer of the product subject to investigation to the customs territory of the Union, this exporter or producer shall not pay the anti-dumping duty until, pursuant to the review, a decision is taken. A security for the anti-dumping duty shall be provided for imports of such product into the customs territory of the Union during the review in accordance with the procedures specified in the Customs Code of the Eurasian Economic Union, taking into account the particularities set out in this paragraph.

The investigating authority shall provide timely information to the customs authorities of the Member States about the date of the initiation of a review.

The security shall take the form of monetary funds (money) in the amount of the anti-dumping duty calculated on the basis of a single anti-dumping duty rate established in accordance with paragraph 103 of this Protocol.

In cases where, pursuant to a review, a decision to apply an anti-dumping measure is taken, an anti-dumping duty shall be paid for the period within which such review was carried out. The amount of the security, from the date on which, pursuant to the review, the decision to apply an anti-dumping measure enters into force, shall form part of the payment of the anti-dumping duty in the amount determined on the basis of the established anti-dumping duty rate, and shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol, taking into account the provisions of this paragraph.

In cases where, pursuant to a review, it is considered appropriate to impose an anti-dumping duty at a rate higher than the amount estimated for the purposes of the security, the difference shall not be collected.

The amount of a security that is higher than the amount of the anti-dumping duty calculated on the basis of the established anti-dumping duty rate shall be refunded to the payer in accordance with the procedure specified in the Customs Code of the Eurasian Economic Union.

A review under this paragraph shall be carried out expeditiously within a period of 12 months.

112. The provisions of section VI of this Protocol concerning evidence and the conduct of an anti-dumping investigation shall apply *mutatis mutandis* to reviews specified in paragraphs 107–113 of this Protocol.

113. The provisions of paragraphs 107–112 of this Protocol shall apply *mutatis mutandis* to price undertakings from an exporter in accordance with paragraphs 90–99 of this Protocol.

10. Circumvention of an Anti-Dumping Measure

114. For the purposes of this section, circumvention of an anti-dumping measure shall be understood as a change in the mode of supply in order to evade the payment of an anti-dumping duty or the fulfilment of price undertakings accepted from the exporter.

115. An anti-circumvention review may be initiated upon an application by an interested party or at the initiative of the investigating authority.

116. The application indicated in paragraph 115 of this Protocol shall include the evidence of:

- 1) circumvention of an anti-dumping measure;
- 2) the undermining of the remedial effect of the anti-dumping measure, as a result of circumvention, and its impact on the volume of production and/or sales, and/or on prices for the like product in the domestic market of the Member States;
- 3) the existence of dumped imports of the product (parts and/or modifications of such product). The normal value of the product, parts or modifications thereof shall be their normal value determined during the course of the investigation pursuant to which the Commission imposed the original anti-dumping measure, appropriately adjusted for the purposes of comparison.

117. An anti-circumvention review shall be concluded within 9 months from the date of the initiation of the review.

118. For the period of the review carried out in accordance with paragraphs 115–120 of this Protocol, the Commission may impose an anti-dumping duty, which shall be levied in accordance with the procedure established for the collection of provisional anti-dumping duties, on parts and/or modifications of the dumped product imported into the customs territory of the Union from the exporting third country, and on the dumped product, and/or parts and/or modifications thereof imported into the customs territory of the Union from any other exporting third country.

119. In cases where, pursuant to a review carried out in accordance with paragraphs 115–120 of this Protocol, the investigating authority has not determined circumvention of an anti-dumping measure, the amounts of the anti-dumping duty paid pursuant to paragraph 118 of this Protocol and in accordance with the procedure established for the collection of provisional anti-dumping

duties, shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall provide timely information to the customs authorities of the Member States if circumvention is not found.

120. In cases where, pursuant to a review carried out in accordance with paragraphs 115–120 of this Protocol, circumvention of an anti-dumping measure has been determined, the Commission may extend the anti-dumping measure to parts and/or modifications of the dumped product imported into the customs territory of the Union from the exporting third country, and to the dumped product, and/or parts and/or modifications thereof, imported into the customs territory of the Union from any other exporting third country. From the date of entry into force of the decision of the Commission to impose an anti-dumping measure indicated in this paragraph, the amounts of anti-dumping duties paid in accordance with the procedure established for the collection of provisional anti-dumping duties, shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

V. Countervailing Measures

121. For the purposes of this Protocol, a subsidy shall mean:

1) a financial contribution by a granting authority conferring a benefit on the recipient of a subsidy, rendered within the territory of an exporting third country, including in the form of:

a direct transfer of funds (including grants, loans, and equity infusion) or potential direct transfers of funds or liabilities (including loan guarantees);

government revenue of a third exporting country that is otherwise due is foregone or not collected (including the provision of tax credits), excluding the cases of exemption of an exported product from taxes or duties levied on the like product when destined for domestic consumption, or excluding the cases of reduction or refund of such taxes or duties in amounts not in excess of those which were actually paid;

provision of concessionary or free goods or services, excluding goods and services intended to maintain and develop general infrastructure, i.e. the infrastructure that is not related to a specific producer and/or exporter;

preferential purchase of goods.

2) any form of income or price support conferring a benefit on the recipient of a subsidy which operates directly or indirectly to increase exports of a product from an exporting third country or to reduce imports of the like product into this third country.

1. Principles of Determining Specificity of Subsidy of Exporting Third Country

122. A subsidy of an exporting third country shall be specific if access to a subsidy is limited to certain enterprises by the granting authority or by the legislation of an exporting third country.

123. For the purposes of this section, certain enterprises shall mean a producer and/or an exporter, or an industry of an exporting third country, or a group (union, association) of producers and/or exporters or industries of an exporting third country.

124. A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific.

125. A subsidy shall not be specific if the legislation of an exporting third country or the granting authority establishes general objective criteria or conditions which govern the eligibility for, and the amount of, a subsidy (including number of employees engaged in the production process or the volume of output) and are strictly adhered to.

126. In any case, a subsidy of an exporting third country shall be specific if the granting of such a subsidy is accompanied by:

- 1) The use of a subsidy by a limited number of certain enterprises;
- 2) the predominant use of a subsidy by certain enterprises;
- 3) the granting of disproportionately large amounts of subsidy to certain enterprises;
- 4) the preferential manner in which discretion is exercised by the granting authority in the decision to grant a subsidy to certain enterprises.

127. Any subsidy of an exporting third country shall be a specific subsidy if:

- 1) a subsidy is contingent, in the law of an exporting third country or in fact, whether solely or as one of several other conditions, upon export performance. A subsidy shall be deemed to be contingent in fact upon export performance if the granting of a subsidy, without having been made contingent upon export performance in the law of an exporting third country, is in fact tied to actual or potential exportation of a product or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone mean a subsidy contingent upon export performance within the meaning of this paragraph;
- 2) a subsidy is contingent, in the law of an exporting third country or in fact, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

128. A determination of specificity of a subsidy of an exporting third country made by the investigating authority shall be based on evidence.

2. Principles of Calculation of Amount of Specific Subsidy

129. The amount of a specific subsidy shall be calculated on the basis of the benefit to the recipient of such subsidy.

130. The amount of the benefit to the recipient of a specific subsidy shall be calculated based on the following principles:

- 1) equity capital by the granting authority shall not be considered as conferring a benefit, unless such equity capital can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) in the territory of the exporting third country;
- 2) a loan by a granting authority shall not be considered as conferring a benefit if there is no difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the loan market of the exporting third country. Otherwise, the benefit shall be the difference between these two amounts;
- 3) a loan guarantee by a granting authority shall not be considered as conferring a benefit if there is no difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the granting authority and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. Otherwise, the benefit shall be the difference between these two amounts adjusted for any differences in fees;
- 4) the provision of goods or services or purchase of goods by a granting authority shall not be considered as conferring a benefit, unless the provision of goods or services is made for less than adequate remuneration, or the purchases is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to existing market conditions for purchase and sale of these goods and services in the exporting third country, including price, quality, availability, marketability, transportation and other conditions of purchase or sale of the good.

3. Determination of Injury to Domestic Industry of Member States by Subsidized Imports

131. For the purposes of this section, the term "injury to a domestic industry of the Member States" shall mean material injury to a domestic industry of the Member States, threat of material injury or material retardation of the establishment of a domestic industry in the Member States.

132. Injury to a domestic industry of the Member States caused by subsidized imports shall be determined on the basis of an examination of the volume of the subsidized imports, the effect of such imports on prices in the domestic market of the Member States for the like product and the impact of such imports on domestic producers of the like product in the Member States.

133. The period of investigation, for which the evidence is examined for the purposes of determination of injury to the domestic industry of the Member States caused by subsidized imports, shall be established by the investigating authority.

134. With regard to the examination of the volume of the subsidized imports, the investigating authority shall consider whether there has been a significant increase in subsidized imports of the product subject to investigation, either in absolute terms or relative to production or consumption of the like product in the Member States.

135. In cases where subsidized imports of a product from more than one exporting third country into the customs territory of the Union are simultaneously subject to investigations, the investigating authority may cumulatively assess the effects of such imports only if it determines the following:

1) the amount of subsidization established in relation to the imports from each exporting third country for that product is more than 1 percent of its value, and the volume of imports from each exporting third country is not negligible in accordance with paragraph 228 of this Protocol;

2) a cumulative assessment of the effects of the subsidized imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product produced in the Member States.

136. With regard to the examination of the effect of the subsidized imports on prices for the like product in the domestic market of the Member States, the investigating authority shall consider whether:

1) there has been a significant price undercutting by the subsidized imports as compared with the price of the like product in the domestic market of the Member States;

2) the subsidized imports have depressed prices of the like product in the domestic market of the Member States to a significant degree;

3) the subsidized imports have prevented price increases of the like product in the domestic market of the Member States, which would have occurred in the absence of such imports, to a significant degree.

137. The examination of the impact of the subsidized imports on the domestic industry of the Member States shall include an evaluation of all relevant economic factors having a bearing on the state of the industry of the Member States, including:

1) actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity;

2) factors, affecting domestic prices;

3) actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise investments.

138. The effect of the subsidized imports on the domestic industry of the Member States shall be assessed in relation to the domestic production of the like product in the Member States when

available data permit the separate identification of the production of the like product on the basis of such criteria as the production process, producers' sales of the like product and profits.

If such available data does not permit the separate identification of the production of the like product, the effects of the subsidized imports on the domestic industry of the Member States shall be assessed in relation to the production of the narrowest group or range of products, which includes the like product, for which the necessary information is available.

139. In making a determination of a threat of material injury to a domestic industry of the Member States caused by subsidized imports, the investigating authority should consider any available factors, including the following:

- 1) nature, the amount of the subsidy or subsidies and the trade effects likely to arise therefrom;
- 2) the rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;
- 3) sufficient freely disposable, or an imminent increase in, capacity of the exporter indicating the likelihood of increased subsidized imports, taking into account the availability of other export markets to absorb any additional exports;
- 4) prices for the product subject of subsidized imports, whether such prices will have depressing or suppressing effect on the prices of the like product at the domestic market of the Member States, and would likely increase demand for further subsidized imports;
- 5) the exporter's inventories of the imported subsidized product.

140. The determination of a threat of material injury to a domestic industry of the Member States shall be made in cases where during the course of the investigation, pursuant to an examination of the factors set out in paragraph 139 of this Protocol, the investigating authority concluded that further subsidized imports are imminent and that, unless countervailing measures are taken, material injury to the domestic industry of the Member States caused by such imports would occur.

141. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry of the Member States shall be based on an examination of all relevant evidence and information before the investigating authority.

142. The investigating authority shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry.

The injury caused by these other factors to the domestic industry of the Member States must not be attributed to the injury to the domestic industry of the Member States caused by the subsidized imports into the customs territory of the Union.

4. Imposition of Provisional Countervailing Duty

143. In cases where the evidence received by the investigating authority before the conclusion of the investigation indicates that there are subsidized imports and that there is injury to a domestic industry of the Member States caused by such imports, the Commission, on the basis of the report specified in paragraph 7 of this Protocol, shall take a decision to apply a countervailing measure by way of imposing a provisional countervailing duty for a period not exceeding 4 months to prevent injury from being caused to the domestic industry of the Member States by the subsidized imports during the investigation.

144. A provisional countervailing duty shall not be imposed sooner than 60 calendar days from the date of the initiation of the investigation.

145. The amount of a provisional countervailing duty shall be equal to the provisionally calculated amount of subsidization per unit of the subsidized and exported product.

146. In cases where the investigating authority determines that there are no grounds for the imposition of a countervailing measure, or a decision not to apply a countervailing measure is taken in accordance with paragraph 272 of this Protocol, the amounts of the provisional countervailing duty shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall provide timely information to the customs authorities of the Member States on the absence of grounds for the imposition of a countervailing measure or on the decision not to apply a countervailing measure taken by the Commission.

147. In cases where, pursuant to an investigation, the decision to apply a countervailing measure is taken on the basis of a threat of injury or material retardation of the establishment of a domestic industry of the Member States, the amounts of the provisional countervailing duty shall be refunded to the payer in accordance with the Annex to this Protocol.

148. In cases where, pursuant to an investigation, the decision to apply a countervailing measure is taken on the basis of material injury to a domestic industry of the Member States or a threat thereof (provided that the non-imposition of a provisional countervailing duty would have led to a determination of material injury to the domestic industry of the Member States) from the date of entry into force of the decision to apply the countervailing measure, the amounts of the provisional countervailing duty shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol, taking into account the provisions of paragraphs 149 and 150 of this Protocol.

149. In cases where, pursuant to an investigation, it is considered appropriate to impose a countervailing duty at a rate less than the provisional countervailing duty, the amounts of the provisional countervailing duty equal to the amount of the countervailing duty calculated on the basis of the established countervailing duty rate shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

The amounts of the provisional countervailing duty which exceed the amount of the countervailing duty calculated on the basis of the established countervailing duty rate shall be refunded to the payer in accordance with the Annex to this Protocol.

150. In cases where, pursuant to an investigation, it is considered reasonable to impose a countervailing duty at a rate higher than the provisional countervailing duty, the difference between the countervailing duty and the provisional countervailing duty shall not be collected.

151. A provisional countervailing duty shall be applied subject to the simultaneous continuation of the investigation.

152. A provisional countervailing duty shall be applied in accordance with paragraphs 164–168 of this Protocol.

153. The decision to impose a provisional countervailing duty, as a rule, shall be taken not later than 7 months from the date of the initiation of the investigation.

5. Acceptance of Voluntary Undertakings from Subsidizing Third Country or Exporter of Product Subject to Investigation

154. The investigation may be suspended or terminated without the imposition of a countervailing duty if the Commission takes a decision to accept one of the following voluntary undertakings (in writing) received by the investigating authority:

the exporting third country agrees to eliminate or limit the subsidy or take other measures concerning its effects;

the exporter of the product subject to investigation agrees to revise its prices for such product (if there are parties related to the exporter in the Member States, then to ensure support of these parties of the undertaking of the exporter to revise prices) so that, as a result of an examination of the price undertakings from the exporter, the investigating authority concludes that

such voluntary undertakings will eliminate the injury to the domestic industry of the Member States.

The increase of the price for the product subject to investigation under such undertakings shall not be higher than the amount of a specific subsidy in the exporting third country calculated per unit of the subsidized and exported product.

The increase of the price for the product subject to investigation may be less than the amount of a specific subsidy of the exporting third country calculated per unit of the subsidized and exported product if such increase is adequate to remove the injury to the domestic industry of the Member States.

155. The decision to accept voluntary undertakings shall not be taken by the Commission until the investigating authority has made a preliminary affirmative determination of subsidized imports and injury caused by such imports to a domestic industry of the Member States.

The decision to accept voluntary undertakings from the exporter of the product subject to investigation shall not be taken by the Commission unless it has obtained the consent of the authorised body of the exporting third country for the acceptance of undertakings from the exporters specified in subparagraph three of paragraph 154 of this Protocol.

156. The decision to accept voluntary undertakings shall not be taken by the Commission if the investigating authority concludes that their acceptance is impractical because the number of actual or potential exporters of the product subject to investigation is too great, or for other reasons.

Where practicable, the investigating authority shall provide to the exporters the reasons why the acceptance of their undertakings was considered as impractical, and shall give the exporters an opportunity to make comments thereon.

157. The investigating authority shall send to each exporter and to the authorised body of the third exporting country from whom voluntary undertakings have been accepted a request for a non-confidential version thereof so that it may be made available to interested parties.

158. Voluntary undertakings may be suggested to the exporting third country or the exporter of the product subject to investigation by the investigating authority, but no exporting third country or exporter shall be forced to enter into such undertakings.

159. In cases where the Commission takes a decision to accept voluntary undertakings, the countervailing duty investigation may be continued upon request of the exporting third country or if the investigating authority so decides.

In cases where, pursuant to an investigation, the investigating authority makes a negative determination of subsidized imports or injury caused by such imports to a domestic industry of the Member States, the voluntary undertakings from the exporting third country or exporters shall automatically lapse, except in cases where such a determination is due in large part to the existence of such undertakings. In cases where such a determination is due in large part to the existence of voluntary undertakings, the Commission may take a decision that such undertakings be maintained for a necessary period of time.

160. In cases where, pursuant to an investigation, the investigating authority makes an affirmative determination of subsidized imports and injury caused by such imports to a domestic industry of the Member States, the voluntary undertakings shall remain in force, consistent with their terms and the provisions of this Protocol.

161. The investigating authority may require the exporting third country or the exporter from whom voluntary undertakings have been accepted by the Commission to provide information relevant to the fulfilment of the voluntary undertakings and to permit verification of this information.

Failure to provide requested information within the period established by the investigating authority and to permit verification of this information shall be deemed as a violation of the voluntary undertakings by the exporting third country or the exporter.

162. In case of violation or withdrawal of voluntary undertakings by the exporting third country or the exporter, the Commission may take a decision to apply a countervailing measure by way of imposing a provisional countervailing duty (if the investigation has not been concluded yet), or a countervailing duty (if the final results of the investigation indicate that there are grounds for such imposition).

In case of violation of voluntary undertakings by the exporting third country or the exporter, the exporting third country or the exporter shall be given the opportunity to make comments on such a violation.

163. The decision to accept voluntary undertakings taken by the Commission shall set out a provisional countervailing duty rate or a countervailing duty rate which may be imposed in accordance with paragraph 162 of this Protocol.

6. Imposition and Application of Countervailing Duty

164. The decision to impose a countervailing duty shall not be taken by the Commission if the specific subsidy of the exporting third country has been withdrawn.

165. The decision to impose a countervailing duty shall be taken after the exporting third country granting the specific subsidy has rejected the proposal to hold consultations, or during the consultations no mutually acceptable solution has been reached.

166. A countervailing duty shall be applied to a product from all exporters which is subsidized and causing injury to a domestic industry of the Member States (except for a product from those exporters from which voluntary undertakings have been accepted by the Commission).

An individual countervailing duty rate may be established by the Commission in respect of products from particular exporters.

167. A countervailing duty rate shall not be in excess of the amount of the specific subsidy of the exporting third country calculated in terms of subsidization.

In cases where subsidies are granted in accordance with different subsidization programs, their cumulative amount shall be taken into consideration.

A countervailing duty rate may be less than the amount of the specific subsidy of the exporting third country if such rate is adequate to remove the injury to the domestic industry of the Member States.

168. When the amount of a countervailing duty rate is being established, written opinions submitted to the investigating authority by consumers in the Member States whose economic interests can be affected by the imposition of a countervailing duty shall be taken into consideration.

169. A countervailing duty may be applied to products which were placed, not more than 90 calendar days prior to the date of imposition of a provisional countervailing duty, under a customs procedure that is conditional on the payment of a countervailing duty if the investigating authority, pursuant to an investigation, has simultaneously determined for this product the following:

- 1) injury which is difficult to repair is caused by massive imports in a relatively short period of time of the product benefiting from specific subsidies paid or granted;
- 2) it is necessary, in order to prevent the recurrence of such injury, to apply a countervailing duty to the imported product specified in subparagraph 1 of this paragraph.

170. After the date of the initiation of the investigation, the investigating authority shall publish in the official sources specified in the Treaty a notice on possible application of a countervailing duty to the product subject to investigation in accordance with paragraph 169 of this Protocol.

The decision to publish such a notice shall be taken by the investigating authority upon request of a domestic industry of the Member States which contains sufficient evidence that the conditions specified in paragraph 169 of this Protocol are fulfilled, or at the initiative of the investigating authority in cases where such evidence is available to the investigating authority.

No countervailing duty shall be applied to the products which were placed under a customs procedure that is conditional on the payment of a countervailing duty prior to the date of official publication of the notice specified in this paragraph.

171. The national legislations of the Member States may establish additional means of notification to interested parties of possible application of a countervailing duty in accordance with paragraph 169 of this Protocol.

7. Duration and Review of Countervailing Measure

172. A countervailing measure shall be applied pursuant to a decision of the Commission to the extent and as long as necessary to remove injury to a domestic industry of the Member States caused by dumped imports.

173. The duration of a countervailing measure shall not exceed 5 years from the date of the application of such measure or from the date of the conclusion of review that was carried out on the basis of a change in circumstances and concerned both the examination of subsidized imports and the injury to a domestic industry of the Member States caused by the subsidized imports, or from the date of the conclusion of an expiry review.

174. An expiry review shall be initiated upon a written application filed in accordance with paragraphs 186–198 of this Protocol, or at the initiative of the investigating authority.

An expiry review shall be initiated when the application contains evidence that the subsidized imports and the injury to the domestic industry of the Member States would be likely to recur or continue if the countervailing measure were removed.

The application for an expiry review shall be filed not later than 6 months prior to the expiry of the countervailing measure.

A review shall be initiated prior to the expiry of a countervailing measure and concluded within 12 months from the date of the initiation of the review.

Prior to the conclusion of a review carried out in accordance with this paragraph, the period of application of the countervailing measure shall be extended pursuant to a decision of the Commission. During the period for which the application of the respective countervailing measure is extended, in accordance with the procedure established for the collection of provisional countervailing duties, countervailing duties shall be levied at the rate established for the countervailing measure, whose duration is subject to extension.

In cases where, pursuant to an expiry review, the investigating authority establishes that there are no grounds for the application of a countervailing measure, or the decision not to apply a countervailing measure is taken in accordance with paragraph 272 of this Protocol, the amounts of the countervailing duty levied in accordance with the procedure established for the collection of provisional countervailing duties, during the period for which the application of the countervailing measure is extended, shall be refunded to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall provide timely information to the customs authorities of the Member States on the absence of grounds for the application of a countervailing measure, or on the decision not to apply an anti-dumping measure taken by the Commission.

Duration of a countervailing measure is to be extended by the Commission in cases where, pursuant to an expiry review, the investigating authority establishes the likelihood of recurrence or continuation of the subsidized imports and injury to the domestic industry of the Member States. From the date of entry into force of a decision of the Commission to extend the period of application of a countervailing measure, the amounts of countervailing duties levied in accordance

with the procedure established for the collection of provisional countervailing duties, during the period for which the application of the countervailing measure is extended, shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

175. For the purposes of determination whether the continued application of a countervailing measure is appropriate and/or for the purposes of reviewing the measure due to changed circumstances, including a review of an individual countervailing duty rate, a review may be initiated upon an application by an interested party or at the initiative of the investigating authority, provided that at least 1 year has elapsed since the imposition of a countervailing measure.

Depending on the purposes of filing an application for a review such an application shall include evidence that due to changed circumstances:

continued application of the countervailing measure is no longer necessary to offset subsidized imports and remove injury to the domestic industry of the Member States caused by the subsidized imports;

existing amount of a countervailing measure exceeds the amount sufficient to offset the subsidized imports and remove injury to the domestic industry of the Member States caused by the subsidized imports;

existing countervailing measure is insufficient to offset the subsidized imports and remove injury to the domestic industry of the Member States caused by the subsidized imports.

A review due to changed circumstances shall be concluded within 12 months from the date of the initiation of the review.

176. The provisions of section VI of this Protocol concerning evidence and the conduct of an investigation shall apply *mutatis mutandis* to reviews specified in paragraphs 172–178 of this Protocol.

177. The provisions of paragraphs 172–178 of this Protocol shall apply *mutatis mutandis* to undertakings accepted from an exporting third country or an exporter in accordance with paragraphs 154–163 of this Protocol.

178. A review may also be carried out for the purposes of determining an individual countervailing duty rate for an exporter subject to a countervailing measure who was not investigated for reasons other than a refusal to cooperate. Such a review may be initiated by the investigating authority upon a request of this exporter.

8. Circumvention of a Countervailing Measure

179. For the purposes of this section, circumvention of a countervailing measure shall be understood as a change in the mode of supply in order to evade the payment of a countervailing duty or the fulfilment of voluntary undertakings.

180. An anti-circumvention review may be initiated upon an application by an interested party or at the initiative of the investigating authority.

181. The application indicated in paragraph 180 of this Protocol shall include the evidence of:

1) circumvention of a countervailing measure;

2) the undermining of the remedial effect of the countervailing measure (as a result of circumvention) and its impact on the volume of production and/or sales, and/or prices for the like product in the domestic market of the Member States;

3) the continued existence of the benefit conferred on the producer and/or the exporter of the product (parts and/or modifications of such product) by the specific subsidy granted.

182. For the period of the review carried out in accordance with paragraphs 179–185 of this Protocol, the Commission may impose a countervailing duty, which shall be levied in accordance with the procedure established for the collection of provisional countervailing duties, on parts and/or modifications of the subsidized product which are imported into the customs territory of the Union from the exporting third country, and on the subsidized product and/or parts and/or modifications thereof imported into the customs territory of the Union from any other exporting third country.

183. In cases where, pursuant to a review carried out in accordance with paragraphs 179–185 of this Protocol, the investigating authority has not determined circumvention of a countervailing measure, the amounts of a countervailing duty paid pursuant to paragraph 182 of this Protocol and in accordance with the procedure established for the collection of provisional countervailing duties, shall be refunded to the payer in accordance with the procedures specified in the Annex to this Protocol.

The investigating authority shall provide timely information to the customs authorities of the Member States if circumvention of a countervailing measure is not found.

184. In cases where, pursuant to a review carried out in accordance with paragraphs 179–185 of this Protocol, circumvention of a countervailing measure has been determined, the countervailing measure may be extended to imported parts and/or modifications of the subsidized product which are imported into the customs territory of the Union from the exporting third country, and to the subsidized product and/or parts and/or modifications thereof, imported into the customs territory of the Union from any other exporting third country. From the entry into force of the decision of the Commission to impose a countervailing measure indicated in this paragraph, the amounts of countervailing duties paid in accordance with the procedure established for the collection of provisional countervailing duties, shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

185. An anti-circumvention review shall be concluded within 9 months from the date of the initiation of the review.

VI. Investigations

1. Basis for Investigation

186. An investigation for the purposes of determination of the existence of increased imports and serious injury or threat thereof caused to a domestic industry of the Member States as well as for the purposes of determination of dumped or subsidized imports and material injury, threat thereof caused to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States, shall be carried out by the investigating authority on the basis of a written application or at the initiative of the investigating authority.

187. The application indicated in paragraph 186 of this Protocol shall be filed by:

1) a producer of the like or directly competitive product (when the application for a safeguard measure is submitted) or the like product (when the application for an anti-dumping or a countervailing measure is submitted) in the Member States or by their authorised representative;

2) an association of producers which includes producers whose collective output constitutes a major proportion, but not less than 25 percent, of the total volume of production of the like or directly competitive product (when the application for a safeguard measure is submitted), or the like product (when the application for an anti-dumping or a countervailing measure is submitted) in the Member States or by an authorised representative of such association.

188. The authorised representatives of producers and associations indicated in paragraph 187 of this Protocol shall have duly certified and documented authority; the originals of respective documents shall be submitted to the investigating authority together with the application.

189. The application specified in paragraph 186 of this Protocol shall be accompanied by evidence of support for the application by producers of the like or directly competitive product, or the like product, in the Member States. The following shall be considered as sufficient evidence of support:

1) documents confirming that other producers of the like or directly competitive product in the Member States, who, together with the applicant, account for the major proportion, but not less than 25 percent, of the total volume of production of the like or directly competitive product in the Member States join the application (when the application for a safeguard measure is submitted);

2) documents confirming that the producers in the Member States (including the applicant) supporting the application account for at least 25 percent of the total production volume of the like product in the Member States, provided that the collective output of the producers in the Member States (including the applicant) supporting the application constitutes more than 50 percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application (when the application to apply an anti-dumping or countervailing measure is submitted).

190. The application indicated in paragraph 186 of this Protocol shall contain:

1) information on the applicant, the volume and value of the production of the like or directly competitive product (when the application for a safeguard measure is submitted), the like product (when the application for an anti-dumping or countervailing measure is submitted) by the domestic industry of the Member States for 3 years preceding the date of filing the application, as well as on the volume and value of the production of the like or directly competitive product (when the application to apply a safeguard measure is submitted) or the like product (when the application to apply an anti-dumping or countervailing measure is submitted) by producers in the Member States supporting the application, and on their share in the total volume of production of the like or directly competitive product when the application to apply a safeguard measure is submitted) or the like product (when the application to apply an anti-dumping or countervailing measure is submitted) in the Member States;

2) a description of the product imported into the customs territory of the Union on which it is proposed to impose a safeguard, anti-dumping or countervailing measure, with the indication of its code in the Customs Nomenclature of Foreign Economic Activity of the EAEU;

3) the names of exporting third countries of origin or export of the product indicated in subparagraph two of this paragraph, on the basis of customs statistics;

4) information on known producers and/or exporters of the product indicated in subparagraph two of this paragraph in the exporting third country, and on known importers and main known consumers of the product in question in the Member States;

5) information on the changes in the volume of imports of the product into the customs territory of the Union on which it is proposed to impose a safeguard, anti-dumping or countervailing measure, for the previous period as well as for the subsequent period for which representative statistics are available as of the date of filing the application;

6) information on the changes in the volume of exports of the like or directly competitive product (when the application for a safeguard measure is submitted) or the like product (when the application for an anti-dumping or a countervailing measure is submitted) from the customs territory of the Union, for the previous period as well as for the subsequent period for which representative statistics are available as of the date of filing the application.

191. Along with the information indicated in paragraph 190 of this Protocol depending on the type of measure proposed in the application, the applicant shall include the following:

1) evidence of increased imports of the product, evidence of serious injury or threat thereof to a domestic industry of the Member States caused by the increased imports of the product, a proposal to impose a safeguard measure with the indication of its amount and the period of application, as well as an action plan for the adjustment of the domestic industry of the Member States to conditions of foreign competition during the period of application of the safeguard measure proposed by the applicant (when the application for a safeguard measure is submitted);

2) information on export price and normal value of the product, evidence of material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States caused by the dumped imports of the

product, as well as a proposal to impose an anti-dumping measure with the indication of its amount and the period of application (when the application for an anti-dumping measure is submitted);

3) information on the existence and nature of a specific subsidy of an exporting third country and, if possible, its amount, evidence of material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States caused by the subsidized imports of the product, as well as a proposal to impose a countervailing measure with the indication of its amount and the period of application (when the application for a countervailing measure is submitted).

192. The evidence of the existence of serious injury or threat thereof to a domestic industry of the Member States (when the application to apply a safeguard measure is submitted) and the evidence of material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States caused by the dumped imports or subsidized imports (when the application to apply an anti-dumping or countervailing measure is submitted) shall be based on objective factors relative to the economic situation of a domestic industry of the Member States, and shall be expressed in quantitative and/or value terms for the previous period as well as for the subsequent period for which representative statistics are available as of the date of filing the application (including the volume of production and the sales volume of the product, the share of the product in the domestic market of the Member States, the cost of production of the product, the price of the product, utilization of capacity, employment, labour productivity, profit margins, profitability, the volume of investment in the domestic industry of the Member States).

193. The information provided in the application shall be accompanied by a reference to the source.

194. For the purposes of comparability, a single monetary unit and a single unit of quantity shall be used for the indicators contained in the application.

195. The information contained in the application shall be certified by managing directors of the producers that provided such information as well as by their employees responsible for accounting and financial reporting, insofar as information which directly relates to the producers in question is concerned.

196. The application with an enclosed non-confidential version thereof (if the application contains confidential information) shall be submitted to the investigating authority in accordance with paragraph 8 of this Protocol and shall be subject to registration on the day of receipt of the application.

197. The date of filing the application shall be the date of registration thereof in the investigating authority.

198. The application for a safeguard, anti-dumping or countervailing measure shall be rejected on the following grounds:

failure to submit information specified in paragraphs 189–191 of this Protocol when filing the application;

submission by the applicant of information provided for in paragraphs 189–191 of this Protocol which is inaccurate;

failure to submit a non-confidential version of the application.

The rejection of the application on other grounds shall not be permitted.

2. Initiation and Subsequent Investigation

199. Before a decision to initiate an investigation is taken, the investigating authority shall notify the exporting third country in writing of the receipt of an application for an anti-dumping or a countervailing measure prepared in accordance with paragraphs 187–196 of this Protocol.

200. Before the decision to initiate an investigation is taken, the investigating authority shall examine the adequacy and accuracy of the evidence and information contained in the application in accordance with paragraphs 189–191 of this Protocol within 30 calendar days from the date of the registration of the application. Such period may be extended should the investigating authority require additional information, but shall not exceed 60 calendar days.

201. The application may be withdrawn by the applicant prior to the initiation of an investigation or during the course of the investigation.

The application shall be considered not to have been filed if it is withdrawn before the initiation of an investigation.

If the application is withdrawn during the course of the investigation, the investigation shall be terminated without the imposition of a safeguard, anti-dumping or countervailing measure.

202. The information contained in the application shall not be subject to public disclosure before the decision to initiate an investigation is taken.

203. The investigating authority shall take a decision to initiate or refuse to carry out an investigation before the expiry of the period indicated in paragraph 200 of this Protocol.

204. When the decision to initiate an investigation is taken, the investigating authority shall notify in writing the authorised body of the exporting third country as well as other interested parties known to it of the decision taken, and, within not more than 10 business days from the date of taking this decision, shall give public notice of the initiation of an investigation in the official sources determined by the Treaty.

205. The publication date of the notice of initiation of an investigation on the official website of the Union on the Internet shall be the date of initiation of the investigation.

206. The investigating authority may take a decision to initiate an investigation (including on its own initiative) only if it has evidence of the existence of increased imports and serious injury or threat thereof caused to a domestic industry of the Member States, or of the existence of dumped or subsidized imports and material injury or threat thereof caused to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States.

In cases where available evidence is insufficient, such an investigation shall not be initiated.

207. The decision to refuse to carry out an investigation shall be taken if the investigating authority, upon examination of the application, determines that the information submitted in accordance with paragraphs 190–191 of this Protocol does not indicate the existence of increased, dumped or subsidized imports of the product into the customs territory of the Union and/or material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States caused by the dumped or subsidized imports, or the existence of serious injury or threat thereof to a domestic industry of the Member States caused by the increased imports into the customs territory of the Union.

208. When the decision to refuse to carry out an investigation is taken, the investigating authority shall notify the applicant in writing of the reason for the refusal to carry out an investigation within 10 calendar days from the date of taking such decision.

209. Interested parties shall have the right to state their intention to participate in the investigation in writing within the period established by this Protocol. They are recognized as participants in the investigation from the date of the registration of their statement of intent to participate in the investigation by the investigating authority.

The applicant and producers in the Member States who have expressed their support for the application shall be recognized as participants in the investigation from the date of the initiation of the investigation.

210. Interested parties shall have the right to submit information (including confidential information) required for investigation purposes with the indication of the source of such information within a period which does not impede the investigation.

211. The investigating authority shall have the right to request from the interested party additional information for the purposes of investigation.

Requests may also be sent to other organisations in the Member States.

Above requests shall be sent by the director (deputy director) of the investigating authority.

A request shall be deemed to have been received by the interested party upon its transmission to the authorised representative of the interested party or after 7 calendar days from the date on which the request was sent by post.

A response of the interested party shall be submitted to the investigating authority not later than 30 calendar days from the date of the receipt of the request.

A response is considered as received by the investigating authority if it reaches the investigating authority not later than 7 calendar days from the date of expiry of the period specified in subparagraph five of this paragraph.

Information submitted by an interested party after the expiry of the specified period may be disregarded by the investigating authority.

Upon reasoned written request of an interested party, the period for submitting the response may be extended by the investigating authority.

212. In cases where an interested party refuses to provide necessary information to the investigating authority, does not provide such information within the established timeframe or provides inaccurate information, thereby significantly impeding the investigation, such interested party shall be considered as non-cooperating, and preliminary or final determinations may be made by the investigating authority on the basis of the facts available to it.

Failure to provide the requested information in electronic form or in electronic format specified in the request of the investigating authority shall not be regarded by the investigating authority as non-cooperation, provided that the interested party in question is able to prove that the full implementation of criteria for the provision of information specified in the request of the investigating authority is not possible or is associated with significant material costs.

In cases where the investigating authority does not take into account the information provided by the interested party for reasons other than those indicated in subparagraph one of this paragraph, the party in question shall be informed of the reasons and grounds for taking such decision and shall be given an opportunity to comment thereon within a period which is established by the investigating authority.

If during the preparation of a preliminary or final determination of the investigating authority, including the determination of normal value (in case of an anti-dumping investigation), the provisions of the first subparagraph of this paragraph are applied and information is used (including the information provided by the applicant), the information to be used in the preparation of such determinations shall be verified using the available information obtained from third sources or from the interested parties, provided that such verification neither impedes the investigation nor prevents its timely conclusion.

213. As soon as possible after the date of taking the decision to initiate an anti-dumping or countervailing duty investigation, the investigating authority shall send to an authorised body of the exporting third country and exporters known to it copies of the application or its non-confidential version (if the application contains confidential information), as well as provide such copies to other interested parties upon their request.

In cases where the number of known exporters is large, a copy of the application or its non-confidential version shall be sent only to an authorised body of the exporting third country.

The investigating authority shall provide copies of the application or its non-confidential version (if the application contains confidential information) to the participants in a safeguard investigation upon their request.

During the investigation, with due regard to the requirement to protect confidential information, the investigating authority shall provide an opportunity for the participants in the investigation at their request to see the information provided in writing by any interested party as evidence relevant to the subject of investigation.

During the investigation the investigating authority shall provide an opportunity for the participants in the investigation to see other information relevant to the investigation which is used in the investigation and is not confidential.

214. At the request of interested parties the investigating authority shall hold consultations on the subject of investigation.

215. During the investigation all interested parties shall be given an opportunity to defend their interests. To this end, the investigating authority shall provide an opportunity for all interested parties at their request to meet to present their opposing views and to offer rebuttal. The provision of such an opportunity shall be provided with due regard to the requirement to preserve the confidentiality of information. It shall not be obligatory for all interested parties to attend a meeting, and the absence of any interested party shall not be prejudicial to its interests.

216. Consumers using in their production the product subject to investigation, representatives of public associations of consumers, state authorities, local government authorities as well as other persons shall have a right to submit to the investigating authority information which is relevant to the investigation.

217 An investigation shall be concluded within:

1) 9 months from the date of the initiation of the investigation on the basis of the application for a safeguard measure. This period may be extended by the investigating authority, but not more than for 3 months;

2) 12 months from the date of the initiation of the investigation on the basis of the application for an anti-dumping or countervailing measure. This period may be extended by the investigating authority, but not more than for 6 months.

218. An investigation shall not hinder customs procedures in respect of the product subject to investigation.

219. The date of conclusion of an investigation shall be the date on which the Commission considers the report pursuant to the investigation and the Commission's draft act, which are specified in paragraph 5 of this Protocol.

In cases where the investigating authority makes a final determination that there are no grounds for the application, review or withdrawal of a safeguard, anti-dumping or countervailing measures, the date of the conclusion of the investigation shall be the date of publication of the relevant notice by the investigating authority.

In case of imposition of a provisional safeguard duty, a provisional anti-dumping duty or a provisional countervailing duty, the investigation shall be concluded prior to the date of expiry of the respective provisional duty.

220. In cases where the investigating authority establishes during the course of the investigation that there are no grounds provided for in subparagraphs two and three of paragraph 3 of this Protocol, the investigation shall be concluded without the imposition of any safeguard, anti-dumping or countervailing measure.

221. In cases where, within 2 calendar years immediately preceding the date of the initiation of the investigation, one producer who has supported the application indicated in paragraph 186 of this Protocol (due regard given to his participation, if applicable, in a group of persons in the

meaning of section XIII of the Treaty) accounts for such a share of production in the customs territory of the Union of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of the an anti-dumping or countervailing duty investigation) that, in accordance with the procedures for assessment of the state of competition, approved by the Commission, the position of the producer in question (due regard given to his participation, if applicable, in a group of persons) in the relevant product market of the Union may be deemed dominant, the division of the Commission authorised to control the compliance with the general rules of competition in transboundary markets shall, upon the request of the investigating authority, assess the effects of a safeguard, anti-dumping or countervailing measure on competition in the relevant product market of the Union.

3. Special Procedures for Anti-Dumping Investigation

222. An anti-dumping investigation shall be terminated without the imposition of an anti-dumping measure if the investigating authority determines that the margin of dumping is less than *de minimis*, or that the volume of dumped imports, actual or potential, or the material injury caused by such imports, or threat thereof, or material retardation of the establishment of a domestic industry of the Member States, is negligible.

The margin of dumping shall be considered to be *de minimis* if this margin does not exceed 2 percent.

223. The volume of dumped imports from a particular exporting third country shall be negligible if it accounts for less than 3 percent of total imports of the product subject to investigation into the customs territory of the Union, provided that exporting third countries which individually account for less than 3 percent of the total imports of the product subject to investigation into the customs territory of the Union collectively account for not more than 7 percent of total imports of the like product subject to investigation into the customs territory of the Union.

224. The investigating authority shall, before a decision pursuant to an anti-dumping investigation is taken, inform the interested parties of the main conclusions made pursuant to the investigation, with due regard to the requirement to protect confidential information, and shall give them an opportunity to make comments.

The period for the interested parties to provide their comments shall be established by the investigating authority and shall not be less than 15 calendar days.

4. Special Procedures for Countervailing Duty Investigation

225. After an application is accepted for consideration and before a decision to initiate an investigation is taken, the investigating authority shall propose to an authorised body of the exporting third country, from which the product in respect of which it is proposed to impose a countervailing measure is exported, to conduct consultations with the purpose of clarifying the situation as to the existence, amount and consequences of granting an alleged specific subsidy and arriving at a mutually acceptable solution.

Such consultations may also continue during the course of the investigation.

226. The conduct of consultations specified in paragraph 225 of this Protocol shall not prevent taking a decision to initiate an investigation and to apply a countervailing measure.

227. A countervailing duty investigation shall be terminated without the imposition of a countervailing measure if the investigating authority determines that the amount of a specific subsidy of an exporting third country is *de minimis*, or the volume of subsidized imports, actual or potential, or the material injury to a domestic industry of the Member States caused by such imports, or threat thereof, or material retardation of the establishment of a domestic industry of the Member States, is negligible.

228. The amount of a specific subsidy shall be considered to be *de minimis* if it is less than 1 percent of the value of the product subject to investigation.

The volume of subsidized imports shall normally be regarded as negligible if it accounts for less than 1 percent of total imports of the like product into the customs territory of the Union, provided that exporting third countries which individually account for less than 1 percent of the total imports of the like product into the customs territory of the Union collectively account for not more than 3 percent of total imports of the like product into the customs territory of the Union.

229. A countervailing duty investigation in respect of an imported subsidized product originating in a developing or least developed country which is the beneficiary of the system of tariff preferences of the Union shall be terminated in cases where the investigating authority determines that the overall level of specific subsidies of the exporting third country granted upon this product does not exceed 2 percent of its value calculated on a per unit basis, or the volume of the imports of this product from such a third country represents less than 4 percent of the total imports of this product into the customs territory of the Union, provided that imports of this product into the customs territory of the Union from developing and least developed countries whose individual shares account for less than 4 percent of the total imports of this product into the customs territory of the Union collectively account for not more than 9 percent of the total imports of this product into the customs territory of the Union.

230. The investigating authority shall, before a decision, pursuant to a countervailing duty investigation, is taken, inform all interested parties of the main conclusions made during the course of the investigation, with due regard to the requirement to protect confidential information, and shall give them an opportunity to make comments.

The period for the interested parties to provide their comments shall be established by the investigating authority and shall not be less than 15 calendar days.

5. Definition of Domestic Industry of Member States in Case of Dumped or Subsidized Imports

231. For the purposes of an anti-dumping or countervailing duty investigation, the term "domestic industry of the Member States" shall be interpreted within the meaning of Article 49 of the Treaty, except for the cases specified in paragraphs 232 and 233 of this Protocol.

232. In cases where the producers of the like product in the Member States are themselves importers of the allegedly dumped or subsidized product, or are related to the exporters or importers of the allegedly dumped or subsidized product, the term "domestic industry of the Member States" may be interpreted as referring to the rest of the producers of the like product in the Member States.

The producers of the like product in the Member States shall be deemed to be related to the exporters or importers of the allegedly dumped or subsidized product if:

particular producers of the like product in the Member States directly or indirectly control the exporters or importers of the product subject to investigation;

particular exporters or importers of the product subject to investigation directly or indirectly control the producers of the like product in the Member States;

particular producers of the like product in the Member States and the exporters or importers of the product subject to investigation are directly or indirectly controlled by a third person;

particular producers of the like product in the Member States and the foreign producers, exporters or importers of the product subject to investigation directly or indirectly control a third person, provided that there are grounds for the investigating authority to believe that such relationship causes such producers to behave differently from non-related parties.

233. In exceptional circumstances, for the purposes of defining the domestic industry of the Member States, the territory of these States may be divided into two or more territorially isolated competitive markets, and the producers in the Member States within one of the indicated markets may be regarded as a separate domestic industry of the Member States, if such producers sell in this market not less than 80 percent of their production of the like product for consumption or

processing, and the demand for the like product in such market is not to a substantial degree satisfied by producers of such product located elsewhere in the territory of the Member States.

In such circumstances, material injury to a domestic industry of the Member States, threat thereof or material retardation of the establishment of a domestic industry of the Member States caused by dumped or subsidized imports may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of sales of dumped or subsidized imports into one of the indicated competitive markets and the dumped or subsidized imports are causing injury to all or almost all producers of the like product in the Member States within one such market.

234. In cases where a domestic industry of the Member States is interpreted within the meaning of paragraph 233 of this Protocol and, pursuant to an investigation, a decision to apply an anti-dumping or countervailing measure is taken, such measure may be applied to all imports of the product into the customs territory of the Union.

In the abovementioned case an anti-dumping or countervailing duty shall be imposed only after the investigating authority has given the exporters an opportunity to cease exports of such product to the area concerned at dumped prices (in the case of dumped imports) or at subsidized prices (in the case of subsidized imports), or to offer respective undertakings in relation to the conditions of exporting into the customs territory of the Union, provided that such opportunity has not been used by the exporters.

6. Public Hearings

235. The investigating authority shall hold public hearings on the basis of a written request submitted by any participant in the investigation and within the time period established by this Protocol.

236. The investigating authority shall send a notice to the participants in the investigation specifying the time and location of public hearings, as well as a list of questions to be discussed in the course of public hearings.

The public hearings shall not be scheduled for a date sooner than 15 calendar days from the day of sending the respective notice.

237. Participants in the investigation or their representatives as well as persons engaged by them for the purposes of providing information relating to the investigation shall have a right to participate in public hearings.

In the course of public hearings the participants in the investigation may express their opinion and provide evidence relating to the investigation. The representative of the investigating authority shall have a right to ask the participants in public hearings questions relating to the essence of the facts submitted by them. The participants in the investigation shall also have a right to ask each other questions and shall give answers. The participants in public hearings shall not be required to disclose information treated as confidential.

238. Oral information which has been provided in the course of public hearings shall be taken into account during the course of the investigation if within 15 calendar days from the date of the public hearings participants in the investigation provide it in writing to the investigating authority.

7. Collection of Information in the Course of Investigation

239. After the decision to initiate an anti-dumping or countervailing duty investigation is taken, the investigating authority shall send to known exporters and/or producers of the product subject to investigation a questionnaire which shall be completed by them.

A questionnaire shall also be sent to producers of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing duty investigation) in the Member States.

If necessary, a questionnaire may also be sent to importers and consumers of the product subject to investigation.

240. Parties specified in paragraph 239 of this Protocol to whom a questionnaire has been sent shall submit their responses to the investigating authority within 30 calendar days from the date of the receipt of the questionnaire.

Upon a reasoned written request of a party specified in paragraph 239 of this Protocol the period in question may be extended by the investigating authority for no more than 14 calendar days.

241. A questionnaire shall be deemed to have been received by the exporter and/or producer of the product from the date of its transmission directly to the representative of the exporter and/or producer or after 7 calendar days from the date on which it was sent by post.

Responses to a questionnaire shall be deemed to have been received by the investigating authority if they have been submitted to the investigating authority in a confidential and a non-confidential versions not later than 7 calendar days from the date of the expiry of the 30 day period specified in paragraph 240 of this Protocol or from the date of the expiry of the extension period.

242. The investigating authority shall satisfy itself as to the accuracy and adequacy of the information submitted by interested parties during the course of an investigation.

In order to verify information provided during the course of an investigation or to obtain further information relating to the investigation carried out, the investigating authority may, as required, carry out verification:

in the territory of the third country, provided that it obtains the agreement of respective foreign exporters and/or producers of the product subject to investigation and the third country which has been officially notified of the forthcoming verification does not object to it;

in the territory of the Member State, provided it obtains the agreement of respective importers of the product subject to investigation and/or producers of the like or directly competitive product.

A verification shall be carried out after the responses to the questionnaires sent in accordance with paragraph 239 of this Protocol have been received unless the foreign producer or exporter voluntarily agrees to verification to be carried out before such responses have been sent and the respective third country does not object to it.

After the agreement has been obtained from the respective participants in the investigation and before the start of verification, these participants shall be provided with a list of documents and materials which shall be submitted to the officers deployed to carry out the verification. The investigating authority shall notify the third country of the addresses and names of the foreign exporters or producers to be verified as well as the dates of such verification.

Other documents and materials which are necessary to verify the information submitted in the responses to a questionnaire may be also requested in the course of verification.

In cases where the investigating authority intends to include experts who are not officers of this authority in the investigating team for the purposes of carrying out verification, the participants in the investigation subject to verification activities shall be notified in advance of such decision of the investigating authority. Participation of such experts in verification should be permitted only if there is a possibility to apply sanctions for their breach of confidentiality of information obtained in connection with verification.

243. In order to verify information submitted during the course of an investigation or to obtain further information relating to the investigation being carried out, the investigating authority shall have a right to direct its representatives to a location of interested parties, collect information, hold consultations and negotiations with interested parties, familiarize itself with samples of the product and take other actions necessary for carrying out an investigation.

8. Submission of Information by Authorised Bodies of Member States, Diplomatic and Trade Representations of Member States

244. For the purposes of this subsection, the term "authorised bodies of the Member States" shall be understood as governmental authorities and territorial (local) authorities of the Member States authorised in the field of customs procedures, statistics, taxation, registration of juridical persons and in other fields.

245. The authorised bodies of the Member States, diplomatic and trade representations of the Member States in third countries shall provide to the investigating authority, upon its request, information specified by this Protocol which is necessary for the initiation and carrying out of safeguard, anti-dumping and countervailing duty investigations (including reviews). the preparation of proposals pursuant to investigations, the monitoring of the effectiveness of safeguard, anti-dumping and countervailing measures imposed, and the control of compliance with the undertakings accepted by the Commission.

246. The authorised bodies of the Member States, diplomatic and trade representations of the Member States in third countries shall be required to:

1) submit, within 30 calendar days from the receipt of the request of the investigating authority, information available to them or give notice of inability to provide information with an explanation of the reasons for refusal. Upon reasoned request of the investigating authority, the requested information shall be submitted within a shorter period;

2) ensure adequacy and accuracy of the information submitted and, if necessary, provide timely respective additional and modified information.

247. The authorised bodies of the Member States, diplomatic and trade representations of the Member States in third countries, within their competence, shall submit to the investigating authority information on requested periods, including:

1) statistics on foreign trade;

2) data from goods declarations categorized by the respective customs procedures, with the indication of physical and value indicators relative to the importation (exportation) of the product, commercial name of the product, terms of supply, country of origin (country of departure, country of destination), name and other details of the sender and the recipient;

3) information on the domestic market of the product subject to investigation and respective domestic industry of the Member States (including data on the volume of production of the product, utilization of capacity, sales, the cost of production, profits and losses of the national enterprises of the Member States, prices of the product in the domestic market of the Member States, profitability, the number of employees, investment, the list of producers of the product);

4) information relative to the assessment of the effects of possible imposition or non-imposition of a safeguard, anti-dumping or countervailing measure, pursuant to the respective investigation, in the market in the Member States for the product subject to investigation, as well as a forecast of production activity of the national enterprises of the Member States.

248. The list of information specified in paragraph 247 of this Protocol is not exhaustive. If required, the investigating authority shall have a right to request other information.

249. The correspondence on the implementation of this subsection shall be maintained and the information upon request of the investigating authority shall be submitted in Russian language. Particular company details (indicators) which include foreign names may be provided using the letters of the Latin alphabet.

250. The information shall be mainly submitted on electronic media. If there is no possibility to submit information on electronic media, it shall be provided on paper media. Information that has been requested in the table format (statistical and customs information) shall be submitted in the format specified in the request of the investigating authority. In cases where it is not possible to

submit information in such a format, the authorised bodies of the Member States, diplomatic and trade representations of the Member States in third countries shall notify the investigating authority and submit the requested information to investigating authority and shall provide requested information in another format.

251. Requests to the authorised bodies of the Member States, diplomatic and trade representations of the Member States in third countries for submission of information shall be made in writing on the letterhead of the investigating authority with the indication of purpose, legal grounds and the time limits for submission of information and shall be signed by the director (deputy director) of the investigating authority.

252. The information upon the request of the investigating authority shall be provided by the authorised bodies of the Member States, diplomatic and trade representations of the Member States in third countries free of charge.

253. Information shall be transmitted via means which are agreed by the exchanging bodies and which are available at the moment of transmission, that ensure safety and protection of information from unauthorised access. In the case of submitting information via facsimile, the original copy shall also be sent by post.

9. Confidential Information

254. Information designated as confidential under the legislation of a Member State (including commercial, tax and other confidential information), except for state secrets, or as internal information of restricted access shall be submitted to the investigating authority in compliance with the requirements established by the legislation of the Member State in respect of such information.

The investigating authority shall ensure the required level of protection of such information.

255. The information submitted by an interested party to the investigating authority shall be treated as confidential if this party provides reasoning that indicates, *inter alia*, that disclosure of such information would be of a competitive advantage to a third party or would have adverse effects upon a person who has submitted such information or upon a person from whom such information has been received.

256. Interested parties submitting confidential information shall be required to provide a non-confidential version of such information.

A non-confidential version shall be in sufficient detail to permit understanding of the substance of the information submitted in confidence.

In exceptional cases, when an interested party is unable to submit a non-confidential version of the confidential information, it must provide a detailed reasoned statement as to why the submission of a non-confidential version is impossible.

257. In cases where the investigating authority determines that the reasoning submitted by an interested party does not permit to consider the submitted information as confidential, or an interested party which has not submitted a non-confidential version of confidential information does not submit reasoning as to why it is impossible to submit confidential information in a non-confidential form or submits information which does not constitute such reasoning, the investigating authority may disregard such information.

258. The investigating authority shall not disclose or transmit to third parties confidential information without a written consent of the interested party who has provided such information or the authorised bodies of the Member States and diplomatic and trade representations of the Member States in third countries specified in paragraph 244 of this Protocol.

For disclosure, use for personal advantage, other misuse of confidential information submitted for the purposes of carrying out an investigation to the investigating authority by applicants, participants in an investigation, interested parties or the authorised bodies of the Member States and diplomatic and trade representations of the Member States in third countries

specified in paragraph 244 of this Protocol, officials and employees of the investigating authority may be deprived of the privileges and immunities provided for in an international treaty of the Union on privileges and immunities, and will be prosecutable in accordance with a procedure which is approved by the Commission.

This Protocol shall not preclude the disclosure by the investigating authority of information containing the reasons on which decisions taken by the Commission are based, or the evidence relied on by the Commission insofar as it is necessary to explain such reasons and evidence in the Court of the Union.

The procedure for the use and protection of confidential information in the investigating authority shall be approved by the Commission.

10. Interested Parties

259. For the purposes of an investigation, interested parties shall be:

- 1) a producer of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;
- 2) an association of producers a majority of the members of which are producers of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;
- 3) an association of producers the members of which account for more than 25 percent of the total volume of production of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;
- 4) an exporter, foreign producer or the importer of the product subject to investigation, and an association of foreign producers, exporters or importers of products a significant part of the members of which are producers, exporters or importers of the product in question from the exporting third country or the country of origin of the product;
- 5) an authorised body of the exporting third country or of the country of origin of the product;
- 6) consumers of the product subject to investigation (if they use such product in production) or associations of such consumers in the Member States;
- 7) public associations of consumers (if the product is mainly consumed by natural persons).

260. Interested parties shall act during the course of the investigation on their own or through their duly authorised representatives.

If an interested party acts during the course of the investigation through an authorised representative, the investigating authority shall provide all information on the subject matter of the investigation to the interested party only through this representative.

11. Notice of Decisions Taken in Connection with Investigation

261. The investigating authority shall publish on the official website of the Union on the Internet the following notices of decisions taken in connection with an investigation:

about initiation of an investigation;

about imposition of a provisional safeguard, a provisional anti-dumping or a provisional countervailing duty;

about possible application of an anti-dumping duty in accordance with paragraph 104 of this Protocol or possible application of a countervailing duty in accordance with paragraph 169 of this Protocol;

about conclusion of a safeguard investigation;

about conclusion of an investigation pursuant to which the investigating authority has concluded that there are grounds for the imposition of an anti-dumping or countervailing measure or that acceptance of respective undertakings is practical;

about conclusion or suspension of an investigation in connection with the acceptance of respective undertakings;

about termination of an investigation pursuant to which the investigating authority concluded that there are no grounds for the imposition of a safeguard, anti-dumping or countervailing measure;

about other decisions taken in connection with an investigation.

Such notices shall also be sent to the authorised body of the exporting third country and to other interested parties known to the investigating authority.

262. The notice of initiation of an investigation shall be published not later than 10 business days from the date on which the investigating authority takes the decision to initiate an investigation and shall include:

- 1) a complete description of the product subject to investigation
- 2) the name of the exporting third country
- 3) a summary of the evidence indicating the existence of increased imports into the customs territory of the Union and the existence of serious injury or threat thereof to a domestic industry of the Member States (in cases where the decision to initiate a safeguard investigation is taken);
- 4) a summary of the evidence indicating the existence of dumped or subsidized imports and the existence of material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States (in cases where the decision to initiate an anti-dumping or countervailing investigation is taken);
- 5) an address to which interested parties may send their opinion or information relevant to an investigation;
- 6) a period of 25 calendar days within which the investigating authority shall accept from interested parties statements of intent to participate in an investigation;
- 7) a period of 45 calendar days within which the investigating authority shall accept from interested parties requests for public hearings;
- 8) a period of 60 calendar days within which the investigating authority shall accept from interested parties comments and information relevant to an investigation in writing.

263. Notice of the imposition of a provisional safeguard, a provisional anti-dumping or a provisional countervailing duty shall be published not later than 3 business days from the date on which such decision is taken by the Commission and shall also contain the following information:

- 1) the name of the exporter of the product subject to investigation or the name of the exporting third country (if it is impracticable to provide the name of the exporter);
- 2) a description of the product subject to investigation which is sufficient for the purposes of customs control;
- 3) the grounds for the affirmative determination of dumped imports with indication of the margin of dumping and a description of the grounds for the methodology used in the calculation and comparison of the normal value of the product and its export price (when a provisional anti-dumping duty is imposed);

4) the grounds for the affirmative determination of subsidized imports with a description of the existence of a subsidy and an indication of the calculated amount of subsidization per unit (when a provisional countervailing duty is imposed);

5) the grounds for the determination of serious or material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States;

6) the grounds for the establishment of a causal relationship between the increased imports, the dumped and subsidized imports, and serious or material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States, respectively;

7) the grounds for the affirmative determination of increased imports (when a provisional safeguard duty is imposed).

264. A notice of possible application of an anti-dumping duty in accordance with paragraph 104 of this Protocol or a notice of possible application of a countervailing duty in accordance with paragraph 169 of this Protocol shall contain:

1) a description of the product subject to investigation which is sufficient for the purposes of customs control;

2) the name of the exporter of the product subject to investigation or the name of the exporting third country (if it is impracticable to provide the name of the exporter);

3) a summary of evidence indicating that the conditions specified in paragraph 104 and 169 of this Protocol are fulfilled.

265. A notice of conclusion of a safeguard investigation shall be published by the investigating authority not later than 3 business days from the date of the conclusion of the investigation and shall contain the main conclusions made by the investigating authority on the basis of the information available to it.

266. The notice of conclusion of an investigation pursuant to which the investigating authority has concluded that there are grounds for the imposition of an anti-dumping or countervailing measure or that the acceptance of respective undertakings is appropriate shall be published not later than 3 business days from the date of the conclusion of the investigation and shall include:

1) an explanation for the final determination on the results of the investigation made by the investigating authority;

2) a reference to the facts on the basis of which such determination was made;

3) the information specified in paragraph 263 of this Protocol;

4) an indication of the reasons for the acceptance or rejection of arguments and requests of the exporters and importers of the product subject to investigation;

5) an indication of the reasons for taking decisions in accordance with paragraphs 48–51 of this Protocol.

267. A notice of termination or suspension of an investigation in connection with the acceptance of respective undertakings shall be published not later than 3 business days from the date of the termination or suspension of an investigation and shall contain a non-confidential version of these undertakings.

268. A notice of termination of an investigation pursuant to which the investigating authority has concluded that there are no grounds for the imposition of a safeguard, anti-dumping or countervailing measure shall be published not later than 3 business days from the date of the termination of the investigation and shall contain:

1) an explanation for the final determination pursuant to the investigation made by the investigating authority;

2) a reference to the facts on the basis of which the determination specified in subparagraph one of this paragraph was made.

269. A notice of the termination of the investigation pursuant to which the investigating authority takes the decision not to apply a measure in accordance with paragraph 272 of this Protocol shall be published not later than 3 business days from the date on which such decision is taken and shall include an explanation of the reasons why the Commission has taken the decision not to apply a safeguard, anti-dumping or countervailing measure, and indicate facts and conclusions on the basis of which such decision has been taken.

270. The investigating authority shall ensure that all notifications provided for by the Marrakesh Agreement Establishing the World Trade Organization of April 15, 1994 with regard to investigations and applied measures are notified to the competent authorities of the World Trade Organization in accordance with the established procedure.

271. The provisions of paragraphs 261–270 of this Protocol shall apply mutatis mutandis to the notices of the initiation and the conclusion of reviews.

VII. Non-Application of Safeguard, Anti-Dumping and Countervailing Measures

272. The Commission, pursuant to an investigation, may take a decision not to apply a safeguard, anti-dumping or countervailing measure even if the application of such measure meets the criteria established by this Protocol.

Such decision may be taken by the Commission if the investigating authority, based on the analysis of all information provided by interested parties, has made a conclusion that the application of such measure may impair the interests of the Member States. This decision may be reviewed in case the reasons which form the basis for taking the decision have changed.

273. The conclusion referred to in subparagraph two of paragraph 272 of this Protocol shall be based on the results of a cumulative assessment of the interests of a domestic industry of the Member States, consumers of the product subject to investigation (if they use the product in their production) and associations of such consumers in the Member States, public associations of consumers (if the product is mainly consumed by natural persons) and importers of the product in question. Such a conclusion may only be made after the mentioned parties have been given an opportunity to comment on the matter in question in accordance with paragraph 274 of this Protocol.

In making such a conclusion, particular importance shall be attached to the elimination of distorting effects of increased, dumped or subsidized imports on the ordinary course of trade and competition in the relevant market for goods of the Member States and the situation in the industry of the Member States.

274. For the purposes of application of the provisions of paragraph 272 of this Protocol, the producers of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing duty investigation) in the Member States, their associations, importers and associations of importers of the product subject to investigation a, consumers of the product subject to investigation (if they use such product in their production), and associations of such consumers in the Member States, public associations of consumers (if such product is mainly consumed by natural persons) shall have the right, within the period established in the notice published in accordance with paragraph 262 of this Protocol, to provide their comments and information on the matter. Such comments and information, or their non-confidential version, as appropriate, shall be made available to other interested parties referred to in this paragraph, who shall have a right to provide their comments in response.

The information provided in accordance with this paragraph shall be taken into consideration regardless of its source, provided that there are objective facts supporting its accuracy.

VIII. Final Provisions

1. Judicial Review of Decisions on Application of Safeguard, Anti-Dumping and Countervailing Measures

275. The procedure and particularities for the appeal of decisions of the Commission and/or action (inaction) of the Commission relating to the application of safeguard, anti-dumping and countervailing measures shall be determined by the Statute of the Court of the Union (Annex No. 2 to the Treaty) and by the Regulation of the Court of the Union.

2. Implementation of Decisions of Court of the Union

276. The Commission shall take necessary measures to implement the decisions of the Court of the Union concerning the application of safeguard, anti-dumping and countervailing measures. The decision of the Commission deemed by the Court of the Union to be inconsistent with the Treaty and/or international treaties within the framework of the Union shall be brought by the Commission into conformity with the Treaty and/or international treaties within the framework of the Union by way of carrying out a review at the initiative of the investigating authority in so far as required for the implementation of the decision of the Court of the Union.

The provisions relating to the conduct of an investigation shall apply *mutatis mutandis* to the conduct of the review.

The period of carrying out a review under this paragraph shall not, as a rule, exceed 9 months.

3. Administration of Investigation

277. For the purposes of the implementation of this Protocol, the Commission shall take decisions on initiation, conduct, conclusion and/or suspension of an investigation. The decisions taken by the Commission shall not alter or contradict the provisions of the Treaty.

**Annex
to the Protocol on Application of Safeguard, Anti-Dumping
and Countervailing Measures with respect to Third Countries**

**Regulation on Transfer and Distribution of Safeguard,
Anti-Dumping, Countervailing Duties**

I. General Provisions

1. This Regulation determines the procedure for transfer and distribution between the Member States of the amounts of the safeguard, anti-dumping and countervailing duties imposed in accordance with Section IX of the Treaty on the Eurasian Economic Union (hereinafter – "the Treaty"). The indicated procedure for transfer and distribution of the amounts of safeguard, anti-dumping, countervailing duties between the Member States shall also apply to the amounts of penalties (interest) accrued on the amounts of safeguard, anti-dumping, countervailing duties in cases and in accordance with the procedure provided for in the Customs Code of the Eurasian Economic Union.

2. The terms used in this Regulation shall have the meaning defined in the Protocol on the procedure for transfer and distribution of import customs duties (other duties, taxes and fees having equivalent effect) and their transfer to the budgets of the Member States (Annex No. 5 to the Treaty), Protocol on the application of safeguard, anti-dumping and countervailing measures to third countries (Annex No. 8 to the Treaty) and the Customs Code of the Eurasian Economic Union.

**II. Transfer and Accounting of Amounts of Safeguard,
Anti-Dumping, Countervailing Duties**

3. From the date of entry into force of the decision of the Commission on application of safeguard, anti-dumping, countervailing measure the amounts of safeguard, anti-dumping, countervailing duties (except for provisional safeguard, provisional anti-dumping, provisional countervailing duties) the obligation to pay which in respect of products imported into the customs territory of the Union arises from the date of application of the respective measure, shall be transferred, distributed to the budgets of the Member States in order and according to the distribution ratios defined in the Protocol on the procedure for transfer and distribution of imports customs duties (other duties, taxes and fees having equivalent effect) and their transfer to the budgets of the Member States (Annex No. 5 to this Treaty) taking into account particularities specified by this Regulation.

4. In cases where the amounts of distributed safeguard, anti-dumping, countervailing duties are not transferred or incompletely transferred to the budget of other Member States within the determined time limits and the information from authorised body of that Member State on the absence of amounts of safeguard anti-dumping, countervailing duties is not provided, the provisions of paragraphs 20-28 of the Protocol on the procedure for transfer and distribution of imports customs duties (other duties, taxes and fees having equivalent effect), their transfer to the budgets of the Member States (Annex No. 5 to the Treaty) specified for transferring and distribution of the customs import duties between Member States shall be applied.

5. The amounts of safeguard, anti-dumping, countervailing duties shall be transferred in the national currency to the single account of the authorised body of the Member State in which they are to be paid in accordance with the Customs Code of the Eurasian Economic Union, including the recovery of such duties.

6. Safeguard, anti-dumping, countervailing duties shall be paid by payers to single account of the authorised body to which they are to be paid in accordance with the Customs Code of the Eurasian Economic Union, under separate settlement (payment) documents (instructions).

7. Safeguard, anti-dumping, countervailing duties may not be offset against any other payments, except for the offset against arrears of the payers for customs fees and fines (percent) (hereinafter – "offset against arrears").

8. Taxes and fees, other payments (excluding import customs duties and export customs duties on crude oil and certain categories of goods produced from oil (petroleum) and exported outside the customs territory of the Union), received on the single account of the authorised body of the Member State in which they are to be paid in accordance with the Customs Code of the Eurasian Economic Union may be offset for payment of safeguard, anti-dumping, countervailing duties.

Import customs duties may be offset against arrears of payers for safeguard, anti-dumping, countervailing duties.

9. Authorised bodies shall separately register:

1) inpayments (refunds, offsets against arrears) of safeguard, anti-dumping, countervailing duties on the single account of the authorised body;

2) distributed amounts of safeguard, anti-dumping, countervailing duties transferred to foreign currency accounts of other Member States;

3) revenues transferred to the budget of the Member State from the distribution of safeguard, anti-dumping, countervailing duties by the Member State;

4) amounts of safeguard, anti-dumping, countervailing duties received in the budget of a Member State from other Member States;

5) default interest received in the budget of Member States for infringement provisions of this Regulation, which caused failure, incomplete and (or) untimely fulfilment of the obligations of a Member State to transfer amounts from distribution of safeguard, anti-dumping, countervailing duties;

6) distributed safeguard, anti-dumping, countervailing duties the transfer of which to foreign currency accounts of other Member States has been suspended.

10. The amounts of revenues indicated in paragraph 9 of this Regulation shall be registered separately in the report on implementation of the budget of each Member State.

11. Amounts of safeguard, anti-dumping, countervailing duties received on the single account of the authorised body on the last business day of a calendar year of a Member States shall be included in the report on implementation of the budget for the reporting year.

12. Amounts of distributed safeguard, anti-dumping, countervailing duties for the last business day of the calendar year of a Member State shall be transferred no later than on the second business day of the current year of the Member State to the budget of this Member State and to foreign currency accounts of other Member States and shall be included in the report on implementation of the budget for the reporting year.

13. Revenues from the distribution of safeguard anti-dumping, countervailing duties received in the budget of a Member State from the authorised bodies of other Member States for the last business day of a calendar year of other Member States shall be included in the report on implementation of the budget for the current year.

14. No funds may be recovered from the single account of the authorised body in execution of judicial acts or otherwise, except in cases of arrears collection for customs fees, safeguard, anti-dumping and countervailing duties, as well as penalties (interest) in accordance with the Customs Code of the Eurasian Economic Union.

15. Provisional safeguard, provisional anti-dumping, provisional countervailing duties shall be paid (recovered) in the national currency to the account specified by the legislation of the Member State customs authorities of which levies provisional safeguard, provisional anti-dumping, provisional countervailing duties.

16. In cases specified in the Protocol on the application of safeguard, anti-dumping and countervailing measures to third countries (Annex No. 8 to the Treaty) the amounts of paid

(recovered) provisional safeguard, provisional anti-dumping, provisional countervailing duties, as well as anti-dumping, countervailing duties paid in the manner prescribed for the levying of appropriate types of provisional duties shall be offset for payment of safeguard, anti-dumping, countervailing duties and transferred to the single account of the authorised body of the Member State in which they were paid, not later than 30 business days from the date of entry into force of the Commission's decision on application (extension of the measure, extension on parts and (or) modifications of the product) of safeguard, anti-dumping, countervailing measures.

In the cases specified in the Protocol on the application of safeguard, anti-dumping and countervailing measures to third countries (Annex No. 8 to the Treaty) amounts to secure the payment of anti-dumping duties shall be offset to anti-dumping duties and transferred to the single account of the authorised body of the Member State in which they were paid, not later than 30 business days from the date of entry into force of the relevant decision of the Commission on the application of anti-dumping measure.

III. Refund of Safeguard, Anti-Dumping and Countervailing Duties

17. Amounts of provisional safeguard, provisional anti-dumping, provisional countervailing duties, as well as anti-dumping, countervailing duties paid in the manner prescribed for the levying of provisional anti-dumping and provisional countervailing duties shall be refunded in cases specified in the Protocol on the application of safeguard, anti-dumping and countervailing measures to third countries (Annex No. 8 to the Treaty), in accordance with the legislation of the Member States in which such duties were paid (recovered), unless otherwise specified by the Customs Code of the Eurasian Economic Union.

18. Refund of safeguard, anti-dumping, countervailing duties shall be carried out in accordance with the legislation of the Member State in which such duties were paid (recovered), unless otherwise specified by the Customs Code of the Eurasian Economic Union, taking into account the provisions of this Regulation.

19. Refund of amounts of safeguard, anti-dumping, countervailing duties to the payer, their offset against arrears shall be carried out from the single account of the authorised body in the current day within the amounts of safeguard, anti-dumping, countervailing duties received on the single account of the authorised body, as well as the amounts offset against safeguard, anti-dumping, countervailing duties in the reporting day, taking into account the amount of refund of safeguard, anti-dumping, countervailing duties not approved by the national (central) bank for execution on the reporting day, except for the cases specified in the paragraph 20 of this Regulation.

20. Refund of the amounts of safeguard, anti-dumping, countervailing duties to the payer, their offset against arrears are carried out from the single account of the authorised body of the Republic of Kazakhstan on the reporting day within amounts of safeguard, anti-dumping, countervailing duties received (offset) to the single account of the authorised body of the Republic of Kazakhstan on the day of the refund (offset).

21. Determination of the amounts of refund of safeguard, anti-dumping, countervailing duties to be refunded and (or) offset against arrears in the current day shall be determined prior to the distribution of received safeguard, anti-dumping, countervailing duties between the budgets of the Member States.

22. In case of insufficient funds for the refund of safeguard, anti-dumping, countervailing duties and (or) their offset against arrears in accordance with paragraphs 19 and 20 of this Regulation, the refund (offset) shall be carried out by a Member State in subsequent business days.

Penalties (interest) for untimely refund to the payer of safeguard, anti-dumping, countervailing duties shall be paid from the budget of that Member State to the payer and shall not be included in the safeguard, anti-dumping, countervailing duties.

IV. Exchange of Information Between Authorised Bodies of the Member States

23. The exchange of information between the authorised bodies required for the implementation of this Regulation shall be carried out in accordance with the decision of the Commission determining the procedure, form and timing of the exchange of such information.

Law of the Republic of Kazakhstan No. 316-V

"On Application of Safeguard, Anti-Dumping and Countervailing Measures to Third Countries" of 8 June 2015

This Law regulates the application of safeguard, anti-dumping and countervailing measures with regard to Third countries in order to protect economic interests of the Republic of Kazakhstan.

Chapter 1. General provisions

Article 1. General definitions used in this Law

Main terms used in this Law:

- 1) "provisional safeguard duty" means a duty applied to imports into the customs territory of the Eurasian Economic Union of the product subject to investigation in relation to which during the course of an investigation the investigating authority has made a preliminary determination of increased imports that cause or threaten to cause serious injury to a domestic industry of the Member States;
- 2) "provisional anti-dumping duty" means a duty applied to imports into the customs territory of the Eurasian Economic Union of the product subject to investigation in relation to which during the course of an investigation the investigating authority has made a preliminary determination of dumped imports that cause material injury to a domestic industry of the Member States, threaten to cause material injury or materially retard the establishment of a domestic industry of the Member States;
- 3) "provisional countervailing duty" means a duty applied to imports into the customs territory of the Eurasian Economic Union of the product subject to investigation in relation to which during the course of an investigation the investigating authority has made a preliminary determination of subsidized imports that cause material injury to a domestic industry of the Member States, threaten to cause material injury or materially retard the establishment of a domestic industry of the Member States;
- 4) "previous period" means 3 calendar years immediately preceding the date of filing the application for the investigation and for which necessary statistical data is available;
- 5) "safeguard duty" means a duty that is applied pursuant to the imposition of a safeguard measure and is levied by the customs authorities of the Member States, irrespective of the import customs duty;
- 6) "safeguard quota" means an establishment of a particular volume of imports of a product imported into the customs territory of the Eurasian Economic Union, below which the product is imported into the customs territory of the Eurasian Economic Union without paying a safeguard duty, and above which - upon paying a safeguard duty;
- 7) "safeguard measure" means a measure to counter increased imports into the customs territory of the Eurasian Economic Union that is applied pursuant to a decision of the Eurasian Economic Commission by way of imposing an import quota, a safeguard quota or a safeguard duty, including a provisional safeguard duty;
- 8) "related parties" means persons that meet one or more of the following criteria:
 - each of these persons is an employee or head of an organization established with the participation of another person;
 - persons are business partners, i.e. bound by contractual relations, operate for profit and jointly bear the costs and losses associated with the implementation of joint activities;
 - persons are employers and employees of one organisation;

- one of them directly or indirectly owns, controls or is a nominee shareholder of 5 or more percent of the voting shares or shares of both persons;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person;
- persons are in marital relations, kindred relations, or are an adoptive parent and an adoptee, as well as a trustee and a ward.

9) "anti-dumping duty" means a duty that is applied pursuant to the imposition of an anti-dumping measure that is levied by the customs authorities of the Member States, irrespective of an import customs duty;

10) "anti-dumping measure" means a measure to counteract dumped imports that is applied pursuant to the decision of the Eurasian Economic Commission by way of imposing an anti-dumping duty, including a provisional anti-dumping duty, or accepting a price undertaking from an exporter;

11) "margin of dumping" means the percentage ratio of the normal value of the product, deducting the export price of the product, to its export price, or the difference between the normal value of the product and its export price in absolute terms;

12) "indirect control" is understood as the possibility of a natural person or a legal entity to determine the decisions made by a legal entity through a natural person or a legal entity or through a number of legal entities between which there is direct control.

13) "Eurasian Economic Commission" (hereinafter - Commission) - supranational body carrying out activities within the authority provided in the Treaty on the Eurasian Economic Union, ratified by the Law of the Republic of Kazakhstan dated October 14, 2014 "On ratification of the Treaty on the Eurasian Economic Union" (hereinafter - the Treaty on the Eurasian Economic Union), and international treaties in the framework of the Eurasian Economic Union;

14) "import quota" means a restriction on importation of the product into the customs territory of the Eurasian Economic Union with respect to the quantity and/or value;

15) "confidential information" is restricted information containing commercial and other secrets protected by the law with the exception of state secrets;

16) "Member States" means States that are members of the Eurasian Economic Union and the parties to the Treaty on the Eurasian Economic Union;

17) "domestic industry of the Member States" means all producers of the like product (for the purposes of anti-dumping and countervailing investigations) or of the like or directly competitive product (for the purposes of the safeguard investigation) in the member States or those of them whose share in the total production in the member States respectively of the like product or the like or directly competitive product constitutes a significant portion, but not less than twenty-five percent;

18) "threat of serious injury to a domestic industry of the Member States" means imminence of serious injury to a domestic industry of the Member States that is confirmed by positive evidence;

19) "serious injury to a domestic industry of the Member States" means overall impairment in the situation related to the production of the like or directly competitive product in the Member States, confirmed by positive evidence, that manifests itself in significant impairment in the industrial, commercial and financial position of the industry of the Member States, and is generally determined for the previous period;

20) "material injury to a domestic industry of the Member States" means deterioration in the position of the domestic industry of the Member States, confirmed by positive evidence, which may manifest itself, in particular, in a decline in production of the like product in the Member States and sales in the market of the Member States, in a decline in profitability, as well as negative effect on the inventories, employment, wages, and the level of investment in the domestic industry of the Member States;

21) "threat of material injury to a domestic industry of the Member States" means imminence of material injury to a domestic industry of the Member States that is confirmed by positive evidence;

22) "countervailing duty" means a duty that is applied pursuant to the imposition of a countervailing measure and is levied by the customs authorities of the Member States, irrespective of an import customs duty;

23) "countervailing measure" means a measure to offset the effect of a specific subsidy of an exporting third country on the domestic industry of the Member States that is applied pursuant to the decision of the Commission by way of imposing a countervailing duty (including a provisional countervailing duty) or accepting voluntary undertakings from an authorized body of the third country granting the subsidy or the exporter;

24) "ordinary course of trade" means sales of the like product in the market of the exporting third country at a price not below the weighted average cost of production defined on the basis of the weighted average costs of production plus weighted average selling, administrative and general costs;

25) "subsidized imports" means imports into the customs territory of the Eurasian Economic Union of a product, whereby a specific subsidy of an exporting third country was used in its production, export and transportation;

26) "granting authority" means a government authority or a local government authority of an exporting third country or a person who acts pursuant to the instruction of the relevant government authority or a local government authority or authorized by the relevant government authority or local government authority in accordance with a legal act or based on factual circumstances;

27) "authorized body in the field of foreign trade activities" (hereinafter - the authorized body) is a central executive body managing and within the limits provided by the legislation of the Republic of Kazakhstan carrying out inter-sectoral coordination in the field of regulation of foreign trade;

28) "investigation" means the procedure carried out by the investigating authority prior to the introduction of safeguard, anti-dumping and countervailing measures;

29) "investigating authority" means authority established by the Commission responsible for carrying out of safeguard, anti-dumping and countervailing investigations in the customs territory of the Eurasian Economic Union;

30) "payers" means persons defined in accordance with the Code of the Republic of Kazakhstan "On customs affairs in the Republic of Kazakhstan";

31) "direct control" is understood as the possibility for a natural person or a legal entity to determine the decisions made by the legal entity through one or more of the following actions:

- exercising of the functions of its executive body;
- receiving the right to determine the conditions of the entrepreneurial activity of the legal entity;
- disposal of more than 5 percent of the total number of votes that refer to shares that represent authorized (joint) capital (fund) of the legal entity.

32) "directly competitive product" means a product that is comparable with the product subject to investigation or with the product that may become the product subject to investigation (review) in its intended use, application, quality or physical characteristics, as well as other main properties so that a consumer substitutes or is willing to substitute it during the consumption with the product subject to investigation or the product that may become the product subject to investigation (review);

33) "like product" means a product which is completely identical to the product subject to investigation or to the product that may become the product subject to investigation (review), or in the absence of such a product, another product that has characteristics closely resembling those of the product subject to investigation or the product that may become the product subject to investigation (review);

34) "third countries" means countries and/or groups of countries that are not the Members of the Eurasian Economic Union, as well as the territories included into the Classifier of Countries of the World that is approved by the Commission;

35) "export price" means a price that is paid or payable upon importation of a product into the customs territory of the Eurasian Economic Union.

Article 2. Legislation of the Republic of Kazakhstan on application of Safeguard, Anti-dumping and Countervailing measures to Third countries

1. The legislation of the Republic of Kazakhstan on application of safeguard, anti-dumping and countervailing measures to Third countries is based on the Constitution of the Republic of Kazakhstan and consists of this Law and other regulations of the Republic of Kazakhstan.

2. If the international treaty ratified by the Republic of Kazakhstan stipulates other rules than those provided by this Law then the rules of the international treaty shall prevail.

Article 3. Scope of this Law

1. This Law shall apply to the relations connected with the use of safeguard, anti-dumping and countervailing measures to Third countries in order to protect the economic interests of the Republic of Kazakhstan.

2. This Law shall not apply to relations connected with the provision of services, execution of works, the transfer of exclusive rights to intellectual property or the right to use intellectual property, investments, currency and export controls, which are regulated by other legislations of the Republic of Kazakhstan.

Article 4. Competence of the authorized body

The authorized body:

1) interacts with the investigating authority on the application of safeguard, anti-dumping and countervailing measures;

2) submit to the investigating authority the proposals to initiate the investigations prior to the application of safeguard, anti-dumping and countervailing measures;

3) coordinates the work of government authorities of the Republic of Kazakhstan for the application of safeguard, anti-dumping and countervailing measures;

4) forms and agrees with the interested government authorities of the Republic of Kazakhstan the proposals on the application of safeguard, anti-dumping or countervailing measures;

5) develops regulations on the application of safeguard, anti-dumping or countervailing measures;

6) cooperates with the official authorities of other countries and with international organizations;

7) exercise other powers provided by this Law, other legislations of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Article 5. Decision on the introduction, application, revision, cancellation of safeguard, anti-dumping or countervailing measures

Decisions on the introduction and application, revision and cancellation of safeguard, anti-dumping or countervailing measures or non-use of the appropriate measures are taken by the Commission.

Article 6. Calculation, payment and refund of safeguard, anti-dumping and countervailing duties

Calculation of safeguard, anti-dumping and countervailing duties, origin and termination of the obligation to pay these duties, determination of deadlines and order of their payment, transfer, distribution and return of safeguard, anti-dumping and countervailing duties are carried out in accordance with the procedure stipulated by the Code of the Republic of Kazakhstan "On Customs Affairs in the Republic of Kazakhstan" for the import duties.

Payment, enlistment, distribution and return of provisional safeguard, provisional anti-dumping and provisional countervailing duties are carried out in accordance with the Treaty on the Eurasian Economic Union.

Chapter 2. Safeguard measures

Article 7. General principles for the application of a safeguard measure

1. A safeguard measure may be applied to the product in the case, if the results of the investigation establish that the import of products into the customs territory of the Eurasian Economic Union is carried out in such increased quantities (in absolute or relative terms to total production in the member States of the like or directly competitive product) and under such conditions that it causes serious injury to the domestic industries of the member States or creates a threat of causing such injury.

2. A safeguard measure shall be applied to a product imported into the customs territory of the Eurasian Economic Union from exporting third country, irrespective of the country of its origin, except:

1) products originating in a developing or a least developed third country benefiting from the tariff preferences system of the Eurasian Economic Union as long as the share of imports of the product subject to investigation from this country does not exceed 3 percent of total imports of the product subject to investigation into the customs territory of the Eurasian Economic Union, provided that the total share of imports from developing and least developed countries, whose individual share of imports of the product subject to investigation does not exceed 3 percent of total imports of the product subject to investigation into the customs territory of the Eurasian Economic Union, collectively account for not more than 9 percent of total imports of the product subject to investigation into the customs territory of the Eurasian Economic Union;

2) product originating in a Participating State of the Commonwealth of Independent States, which is a party to the Treaty on a Free Trade Area ratified by the Law of the Republic of Kazakhstan of 25 October 2012 "On ratification of the Treaty on Free Trade Area" subject to conditions specified in the article 9 of the indicated Treaty.

Article 8. Determination of Serious Injury or Threat Thereof to Domestic Industry of Member States Caused by Increased Imports

1. For the purposes of determination of serious injury or threat thereof to a domestic industry of the Member States caused by increased imports into the customs territory of the Eurasian Economic Union, in the course of an investigation the investigating authority shall evaluate all factors of an objective and quantifiable nature which have a bearing on the economic situation of the domestic industry of the Member States, including the following:

- 1) the rate and amount of the increase in imports of the product subject to investigation in absolute and relative terms to domestic production or consumption of the like or directly competitive product in the Member States;
 - 2) the share of imported product subject to investigation in the total volume of sales of this product and the like or directly competitive product in the market of the member States;
 - 3) the level of prices of imported product subject to investigation in comparison with the level of prices for a like or directly competitive product manufactured in the member States;
 - 4) changes in the volume of sales of the like or directly competitive product produced in the member States in market of the member States;
 - 5) changes in the volume of production of the like or directly competitive product, productivity, utilization of capacity, amount of profits and losses, and the employment in the domestic industry of the member States.
2. Serious injury or threat thereof to a domestic industry of the Member States caused by increased imports shall be determined pursuant to an examination of all relevant evidence and information available to the investigating authority.
 3. Along with increased imports, the investigating authority shall examine other known factors, which at the same time are causing or threatening to cause serious injury to the domestic industry of Member States. Such injury must not be attributed to the serious injury or threat thereof caused by increased imports into the customs territory of the Eurasian Economic Union.

Article 9. The imposition of provisional safeguard duty

1. In critical circumstances where delay would cause damage to a domestic industry of the Member States which it would be difficult to repair, the Commission, before the completion of the respective investigation, may take a decision to apply a provisional safeguard duty for a period not exceeding 200 calendar days on the basis of a preliminary determination by the investigating authority that there is clear evidence that increased imports of the product subject to investigation have caused or are threatening to cause serious injury to a domestic industry of the Member States.

The investigation shall be continued in order to obtain the final determination of the investigating authority.

2. Prior to the adoption of the Commission's decision to impose provisional safeguard duty, the authorized body accords with the interested government authorities of the Republic of Kazakhstan a proposal to impose provisional safeguard duty, prepared by the investigating authority on the basis of the provisional conclusion.

3. The investigating authority shall notify in writing the authorized body of the exporting third country as well as other interested parties known to it of the possible imposition of a provisional safeguard duty.

4. At the request of the authorized body of the exporting third country to hold consultations on the imposition of a provisional safeguard duty, such consultations shall be initiated after the decision to apply a provisional safeguard duty is taken by the Commission.

5. In cases where, pursuant to an investigation, the investigating authority determines that there are no grounds for the imposition of a safeguard measure, or the decision not to apply a safeguard measure is taken in accordance with the Article 42 of this Law, the amount of the provisional safeguard duty shall be refunded to the payer in accordance with the Article 6 of this Law.

6. In cases where, pursuant to an investigation, the decision to apply a safeguard measure (including in the form of an import or safeguard quota) is taken, the duration of the provisional safeguard duty shall be counted as part of the overall period of application of the safeguard measure, and from the date of entry into force of the decision to apply the safeguard measure

taken pursuant to an investigation, the amounts of provisional safeguard duty shall be transferred and distributed in accordance with the Article 6 of this Law.

7. In cases where, pursuant to an investigation, it is considered reasonable to impose a safeguard duty at a rate less than the provisional safeguard duty, the amounts of the provisional safeguard duty equal to the amount of the safeguard duty calculated on the basis of the established safeguard duty rate shall be transferred and distributed in accordance the Article 6 of this Law.

The amounts of the provisional safeguard duty, which exceed the amount of the safeguard duty calculated based on the established safeguard duty rate shall be refunded to a payer in accordance with legislations of the Republic of Kazakhstan.

8. In cases where, pursuant to an investigation, it is considered reasonable to impose a safeguard duty at a rate higher than the provisional safeguard duty, the difference between the amount of the provisional safeguard duty and the amount of the safeguard duty shall not be collected.

9. The decision to impose of a provisional safeguard duty, as a rule, shall be taken not later than 6 months from the date of the initiation of the investigation.

Article 10. The application of safeguard measure

1. A safeguard measure shall be applied pursuant to a decision of the Commission to the extent and as long as necessary to prevent or remedy serious injury or threat thereof to a domestic industry of the Member States and to facilitate the adjustment of a domestic industry of the Member States to changing economic conditions.

2. Before the Commission takes decision to apply a safeguard measure, authorized body shall agree with the interested government authorities of the Republic of Kazakhstan on a proposal to impose safeguard duties, import or safeguard quota prepared by the investigating authority.

3. In cases where a safeguard measure is applied by way of establishing an import quota, the level of such quota shall not be lower than the average annual volume of imports of the product subject to investigation (in quantitative or in value terms) for the previous period, except in cases where a lower level of import quota is necessary to remedy serious injury or threat thereof to a domestic industry of the Member States.

4. In cases in which an import quota is allocated among exporting third countries, those of them having an interest in supplying the product subject to investigation to the customs territory of the Eurasian Economic Union shall be provided an opportunity to hold consultations on the allocation of import quota among them.

5. In cases where the conduct of consultations specified in paragraph 4 of this Article is not practicable or no agreement on such allocation is reached in the consultations, an import quota shall be allocated among exporting third countries having an interest in exporting the product subject to investigation to the customs territory of the Eurasian Economic Union based upon the proportions of this product, imported from these third countries during the previous period, of the total quantity or value of imports of such product.

Any special factors, which may have affected or may be affecting the trade in the product shall be taken into account.

6. In cases where imports of the product subject to investigation from certain exporting third countries have increased in disproportionate percentage in relation to the total increase of imports of such product within 3 years preceding the date of filing the application for the investigation, the Commission may allocate an import quota among such exporting third countries, taking into account the absolute and relative increase in imports of this product into the customs territory of the Eurasian Economic Union from such exporting third countries.

The provisions of this paragraph shall be applied only in cases where the investigating authority has determined the existence of serious injury to a domestic industry of Member States.

7. In the cases stipulated by the decision of the Commission, the allocation of import quotas is carried out depending on type of products in respect of which the decision on the establishment of import quotas was made by the authorized body and other government authorities within their competence.

8. The procedure for application of a safeguard measure in the form of an import quota shall be determined by the Commission. In cases where such a decision provides for import licensing, licenses shall be issued in accordance with the procedure specified by the legislation of the Republic of Kazakhstan on permissions and notifications for products for which import quantitative restrictions are applied.

9. In cases where a safeguard measure is applied by way of establishing a safeguard quota, determination of level, allocation, and application of such quota shall be carried out in accordance with the procedure specified for import quota in paragraphs 1-8 of this Law.

Article 11. Duration and review of safeguard measure

1. The duration of a safeguard measure shall not exceed 4 years, except for the case where the duration of such a measure is extended in accordance with paragraph 2 of this Article.

2. The duration of a safeguard measure specified in paragraph 1 of this Article may be extended by a decision of the Commission if, pursuant to a review carried out by the investigating authority it is determined that it is necessary to extend the duration of a safeguard measure to remove serious injury to a domestic industry of the Member States or threat thereof and there is evidence that the domestic industry of the Member States is adjusting to the changing economic conditions.

3. If the Commission takes a decision to extend a safeguard measure, such safeguard measure shall not be more restrictive than the safeguard measure, which is in force on the date when this decision is taken.

4. In cases where the duration of a safeguard measure exceeds 1 year, the Commission shall progressively liberalize such safeguard measure at regular intervals during the period of application.

In cases where the duration of a safeguard measure exceeds 3 years, not later than the mid-term of the measure, the investigating authority shall carry out a review, pursuant to which the safeguard measure may be maintained, liberalized or withdrawn.

For the purposes of this paragraph, liberalization of a safeguard measure shall mean an increase in an import quota or a safeguard quota, or a reduction of a safeguard duty rate.

5. The total period of application of a safeguard measure, including the period of application of a provisional safeguard duty and the period for which the duration of a safeguard measure is extended, shall not exceed 8 years.

6. No safeguard measure shall be applied again to the import of a product, which has been subject to a safeguard measure for a period of time equal to the period of duration of the previous safeguard measure. The period of such non-application of a safeguard measure shall be not less than 2 years.

7. A safeguard measure with a duration of 180 calendar days or less, notwithstanding the provisions of paragraph 6 of this Article, may be applied again to the same product if at least 1 year has elapsed since the date of imposition of a previous safeguard measure and a safeguard measure has not been applied to such product more than twice in the five-year period preceding the date of imposition of the new safeguard measure.

Chapter 3. Anti-dumping measures

Article 12. General principles of application of anti-dumping measure

1. An anti-dumping measure is applied to the product, which is the subject of the dumped imports, in case the results of the investigation conducted by the investigating authority was established that the import of such product into the customs territory of the Eurasian Economic Union is causing material injury to domestic industry of the Member States, threatens to cause such injury or substantial slowdown in creation of domestic industry of the Member States.

2. A product shall be considered as being dumped if the export price of the product is less than its normal value.

3. The period of investigation for which data is examined for the purpose of determining the existence of dumped imports shall be established by the investigating authority.

This period should normally be 12 months preceding the date of filing the application for investigation, for which the statistical data is available, but in any case no less than 6 months.

Article 13. Determination of margin of dumping

1. The margin of dumping shall be determined by the investigating authority on the basis of a comparison of:

1) a weighted average normal value of the product with a weighted average export price of the product;

2) normal value of the product with export prices of the product on a transaction-to-transaction basis;

3) weighted average normal value of the product with prices of individual export transactions provided that prices of the product differ significantly among different purchasers, regions or time periods.

2. The comparison of export price and normal value shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time.

3. In comparing export price with normal value allowances shall be made for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.

The investigating authority shall ensure that the allowances for the aforementioned differences do not duplicate each other and do not distort the result of the comparison of export price and normal value. The investigating authority may request the interested parties to provide information necessary to ensure a fair comparison of export price of the product with its normal value.

4. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting third country or when, because of the low volume of sales of the like product in the ordinary course of trade in the domestic market of the exporting third country or because of the particular market situation in the exporting third country, such sales do not permit a proper comparison of export price of the product and the price of the like product sold in the market of exporting third country, export price of the product shall be compared either with a comparable price of the like product imported from the exporting third country into another third country (provided that the price of the like product is representative), or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

5. In cases where the product is imported into the customs territory of the Eurasian Economic Union from a third country which is not the country of origin, the export price for such product shall be compared with the comparable price of the like product in the domestic market of the third country.

The export price of the product may be compared with the comparable price of the like product in the country of origin if the product is merely transshipped through the third country from which it is exported to the customs territory of the Eurasian Economic Union, or it is not produced in this third country, or there is no comparable price for the like product in this third country.

6. In the cases where the comparison of the export price of the product with its normal value requires a conversion of currencies, such conversion should be made using the official rate of exchange on the date of sale.

In cases where a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used.

The investigating authority shall ignore fluctuations in exchange rates and in the course of an investigation shall allow exporters at least 60 calendar days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

7. The investigating authority shall, as a rule, determine an individual margin of dumping for each known exporter and/or producer of the product who has provided the necessary information permitting the determination of an individual margin of dumping.

8. In cases where the investigating authority concludes that it is impracticable to determine an individual margin of dumping for each known exporter and/or producer of the product due to the total number of exporters, producers or importers of the product, variety of types of products involved, or any other reason, it may limit the determination of an individual margin of dumping to a reasonable number of interested parties or it may determine the margin of dumping in relation to samples of the product originating in each exporting third country, which are statistically valid on the basis of information available to the investigating authority and which can be investigated without impeding the investigation.

The selection of interested parties for the purposes of limiting the determination of individual margins of dumping shall preferably be made by the investigating authority in consultation with and with the consent of the respective exporters, producers and importers of the product subject to investigation.

In cases where the investigating authority have limited the determination in accordance with this paragraph, it shall also determine an individual margin of dumping for any foreign exporter or foreign producer not initially selected who submits the necessary information permitting the determination of an individual margin of dumping in time for that information to be considered, except where the number of foreign exporters and/or foreign producers is so large that individual examinations may prevent the timely completion of the investigation by the investigating authority.

Voluntary responses of such foreign exporters and/or foreign producers shall not be discouraged by the investigating authority.

9. In cases where the investigating authority have limited the determination of an individual margin of dumping, as provided for in paragraph 8 of this Article, the margin of dumping calculated for foreign exporters or foreign producers of the dumped product, not selected for the determination of an individual margin of dumping, who express their consent to be selected and submit the necessary information within the established time period, shall not exceed the weighted average margin of dumping determined for those selected foreign exporters or foreign producers of the dumped product.

10. If exporters or producers of the product subject to investigation do not submit necessary information to the investigating authority in a required form and within the established time period, or if submitted information is not verifiable or is inaccurate, the investigating authority may determine the margin of dumping on the basis of the facts available.

11. Along with the determination of an individual margin of dumping for each known exporter and/or producer of the product who has submitted necessary information permitting the determination of an individual margin of dumping, the investigating authority may determine a single margin of dumping for all other exporters and/or producers of the product subject to investigation based on the highest margin of dumping determined during the course of the investigation.

Article 14. Determination of normal value

1. The investigating authority shall determine normal value on the basis of prices for the like product sold in the ordinary course of trade in the domestic market of the exporting third country during the period of investigation to buyers who are not related to the producers and exporters that are residents of this third country, for the use on the customs territory of the exporting third country.

For the purposes of determination of normal value, prices for the like product sold in the domestic market of the exporting third country to buyers who are related to the producers and exporters that are residents of this third country may be taken into account in cases where it is determined that the relationship does not affect the pricing policy of the foreign producer and/or exporter.

2. Volume of sales of the like product in the ordinary course of trade in the domestic market of the exporting third country shall be considered as sufficient for the determination of the normal value, if such volume constitute not less than 5 percent of the total volume of exports of the product to the customs territory of the Eurasian Economic Union from the exporting third country.

A lower volume of sales of the like product in the ordinary course of trade should be acceptable for the determination of the normal value if the evidence demonstrates that such a volume is sufficient to provide for a proper comparison of the export price of the product with the price for the like product in the ordinary course of trade.

3. For the purposes of the determination of the normal value of the product in accordance with paragraph 1 of this Article, the price for the product sold to buyers in the domestic market of the exporting third country shall be the weighted average price of the like product sold during the period of investigation or the price for the product in individual transactions within this period.

4. Sales of the like product in the domestic market of the exporting third country or from the exporting third country to another third country at prices below per unit costs of production of the like product plus administrative, selling and general costs may be disregarded in the determination of the normal value only in cases where the investigating authority establishes that within the period of investigation such sales are made in substantial quantities and at prices which do not provide for the recovery of all costs within this period.

5. In cases where the price of the like product, which is below per unit costs of production plus administrative, selling and general costs at the time of sale, is above the weighted average per unit costs of production plus administrative, selling and general costs for the period of investigation, such price shall be considered to provide for recovery of all costs within the period of investigation.

6. Sales of the like product at prices below per unit costs of production plus administrative, selling and general costs are considered as made in substantial quantities in cases where the weighted average price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs of production of the like product plus administrative, selling and general costs, or the volume of sales at prices below such per unit costs represents not less than 20 percent of the volume sold in transactions under consideration for the determination of the normal value.

7. Per unit costs of production of the like product plus administrative, selling and general costs shall be calculated on the basis of records submitted by the exporter or producer of the product, provided that such records are in accordance with the generally accepted accounting principles and rules of the exporting third country and completely reflect the costs associated with the production and sale of the product.

8. The investigating authority shall consider all available evidence on the proper allocation of costs of production, administrative, selling and general costs, including that submitted by the exporter or producer of the product subject to investigation, provided that such allocation of costs has been normally utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

9. Costs of production, administrative, selling and general costs shall be adjusted for non-recurring items of cost, which benefit production, or for circumstances in which costs during the period of investigation are affected by start-up operations. Such adjustments shall reflect the costs at the end of the start-up period or, in cases where the start-up period exceeds the period of investigation, at the most recent stage of the start-up period, which is covered by the investigation.

10. The amounts for administrative, selling and general costs and for profits, which are relevant to the industry, shall be determined on the basis of actual data pertaining to production and sales in the ordinary course of trade of the like product, which is provided by the exporter or producer of the product subject to investigation.

When such amounts cannot be determined on this basis, the amounts may be determined based on:

1) the actual amounts incurred and realized by the exporter or producer of the product subject to investigation in respect of production and sales in the domestic market of the exporting third country of the same category of products;

2) the weighted average of the actual amounts incurred and realized by other exporters or producers in respect of production and sales of the like product in the domestic market of the exporting third country;

3) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same category in the domestic market of the exporting third country.

11. In case of dumped imports from an exporting third country in which the prices in the domestic market are directly regulated by the State or in which the State has a monopoly of its foreign trade, the normal value of the product may be determined on the basis of the price or constructed value of the like product in an appropriate third country which is comparable for the purposes of the investigation with the exporting third country, or on the basis of the price of the like product when exported from such a third country.

In cases where the determination of normal value in accordance with this paragraph is not possible, the normal value of the product may be determined based on the price paid or payable for the like product on the customs territory of the Eurasian Economic Union, adjusted for profits.

Article 15. Determination of export price

1. The export price of a product shall be determined based on information on sales of the product during the period of investigation.

2. In cases where there is no information on the export price of the dumped product or where the investigating authority has reasonable doubts concerning the reliability of the information on the export price of this product because the exporter and the importer are related parties (including the relationship between each of them and the third party) or when there is a restrictive business practice in the form of a compensatory arrangement in relation to the export price for such a

product, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition as imported into the customs territory of the Eurasian Economic Union, on such basis as the investigating authority may determine. For the purposes of comparison of the export price of the product with its normal value, allowances should be made for costs, including customs duties and taxes, incurred between importation and resale, and for profits.

Article 16. Determination of material injury to domestic industry of the Member States caused by dumped imports, the threat of such injury or substantial slowdown in creation of the domestic industry of Member States as a result of the dumped imports

1. Material injury to the domestic industry of the Member States, the threat of such injury or significant slowdown in creation of the domestic industry of the Member States caused by the dumped imports shall be determined on the basis of the results of an examination of the volume of the dumped imports, the effect of such imports on prices in the domestic market of the Member States for the like product and the impact of such imports on domestic producers of the like product in the Member States.

2. The period of investigation, for which the evidence is examined for the purposes of determination of material injury to the domestic industry of the Member States, the threat of such injury or significant slowdown in creation of the domestic industry of the Member States caused by dumped imports, shall be established by the investigating authority.

3. With regard to the examination of the volume of the dumped imports, the investigating authority shall consider whether there has been a significant increase in dumped imports of the product subject to investigation (in absolute terms or relative to production or consumption of the like product in the Member States).

4. With regard to the examination of the effect of the dumped imports on prices for the like product on the domestic market of the Member States, the investigating authority shall consider whether:

1) there has been a significant price undercutting by the dumped imports as compared with the price of the like product in the domestic market of the Member States;

2) the dumped imports have depressed prices of the like product in the market of the Member States to a significant degree;

3) the dumped imports have prevented price increases for the like product in the market of the Member States, which would have occurred in the absence of such imports, to a significant degree.

5. In cases where imports of a product from more than one exporting third country into the customs territory of the Eurasian Economic Union are simultaneously subject to anti-dumping investigations, the investigating authority may cumulatively assess the effects of such imports only if it determines the following:

1) the margin of dumping established in relation to the imports from each exporting third country is more than de minimis, and the volume of imports from each exporting third country is not negligible as defined in paragraph 2 of Article 34 of this Law;

2) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product produced in the Member States.

6. The examination of the impact of the dumped imports on the domestic industry of the Member States shall include an evaluation of all relevant economic factors having a bearing on the state of the domestic industry of the Member States, including:

1) the degree of recovery in the economic position of the domestic industry of the Member States after the impact of the past dumped or subsidized imports;

- 2) actual or potential decline in output, sales, market share in the market of the Member States, profits, productivity, return on investments, or utilization of capacity;
- 3) factors affecting prices on the market of the Member States;
- 4) the magnitude of the margin of dumping;
- 5) actual or potential negative effect on growth rate of production, inventories, employment, wages, ability to raise investments and the financial state.

One or several factors cannot give decisive guidance for the purposes of determination of material injury to the domestic industry of the Member States, the threat of such injury or significant slowdown in creation of the domestic industry of the Member States due to dumped imports.

7. The demonstration of a causal relationship between the dumped imports and the material injury to the domestic industry of the Member States, the threat of such injury or significant slowdown in creation of the domestic industry of the Member States shall be based on an examination of all relevant evidence and information before the investigating authority.

8. Along with dumped imports, the investigating authority shall also examine any other known factors, which at the same time are causing material injury to the domestic industry of the Member States, the threat of such injury or significant slowdown in creation of the domestic industry of the Member States.

Factors which may be considered as relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices, developments in technology, as well as the export performance and productivity of the domestic industry of the Member States.

The injury caused by these other factors to the domestic industry of the Member States must not be attributed to the material injury to the domestic industry of the Member States, the threat of such injury or significant slowdown in creation of the domestic industry of the Member States caused by the dumped imports into the customs territory of the Eurasian Economic Union.

9. The effect of the dumped imports on the domestic industry of the Member States shall be assessed in relation to the domestic production of the like product in the Member States when available data permit the separate identification of the production of the like product on the basis of such criteria as the production process, producers' sales of the like product and profits.

In cases where such available data does not permit the separate identification of the production of the like product, the effects of the dumped imports on the domestic industry of the Member States shall be assessed in relation to the production of the narrowest group or range of products, which includes the like product, for which the necessary information is available.

10. In making a determination of a threat of material injury to a domestic industry of the Member States caused by dumped imports, the investigating authority should consider all the available factors, including the following:

- 1) the rate of increase of the dumped imports indicating the likelihood of further increased importation;
- 2) sufficient freely disposable, or an imminent increase in, capacity of the exporter which indicates the likelihood of increased dumped imports of this product, taking into account the availability of other export markets to absorb any additional exports of this product;
- 3) the level of prices for the product subject to investigation, if such level of prices may have a depressing or suppressing effect on domestic prices for the like product in the Member States, and would likely further increase demand for the product subject to investigation;
- 4) the exporter's inventories of the product subject to investigation.

11. The determination of a threat of material injury to a domestic industry of the Member States shall be made in cases where during the course of the investigation, pursuant to an examination of the factors indicated in paragraph 10 of this Article, the investigating authority concluded that further dumped imports are imminent and that, unless an anti-dumping measure is taken, material injury to the domestic industry of the Member States caused by such imports would occur.

Article 17. Imposition of provisional anti-dumping duty

1. If the information, obtained prior to completion of investigation indicates the presence of dumped imports and the resulting injury to domestic industry of the Member States based on the report of the investigating authority, which contain a provisional decision on the application of anti-dumping measure by imposing provisional antidumping duty.

2. Prior to the decision of Commission on imposition of provisional anti-dumping duty, authorized body coordinate with interested government authorities of the Republic of Kazakhstan a proposal to impose a provisional anti-dumping duty prepared by the investigating authority based on pre-trial detention.

3. A provisional anti-dumping duty shall not be imposed sooner than 60 calendar days from the date of the initiation of the investigation.

4. The amount of a provisional anti-dumping duty shall be sufficient to remove injury to the domestic industry of the Member States, being not greater than the provisionally estimated margin of dumping.

5. In cases where the amount of a provisional anti-dumping duty is equal to the amount of the provisionally estimated margin of dumping, the period of application of the provisional anti-dumping duty shall not exceed 4 months, except for the case where this period is extended to 6 months upon the request of exporters representing a major percentage of the dumped imports subject to investigation.

6. In cases where the amount of a provisional anti-dumping duty is less than the provisionally estimated margin of dumping, the period of application of the provisional anti-dumping duty shall not exceed 6 months, expect for the case when this period is extended to 9 months upon the request of the exporters representing a major percentage of the dumped imports subject to investigation.

7. In cases where the investigating authority determines, pursuant to an investigation, that there are no grounds for the imposition of an anti-dumping measure, or the decision not to apply an anti-dumping measure is taken in accordance with the Article 42 of this Law, the amount of the provisional anti-dumping duty shall be refunded to the payer in accordance with the procedure specified in legislations of the Republic of Kazakhstan.

8. In cases where, pursuant to an investigation, the decision to apply an anti-dumping measure is taken on the basis of a threat of material injury to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States, the amounts of the provisional anti-dumping duty shall be refunded to the payer in accordance with the procedure specified in the Article 6 of this Law.

9. In cases where, pursuant to an investigation, the decision to apply an anti-dumping measure is taken on the basis of material injury to a domestic industry of the Member States or a threat of such injury (provided that the non-imposition of a provisional anti-dumping duty would have led to a determination of material injury to the domestic industry of the Member States), from the date of entry into force of the decision to apply the anti-dumping measure, the amounts of the provisional anti-dumping duty shall be transferred and distributed in accordance with Article 6 of this Law, taking into account the provisions of paragraphs 10 and 11 of this Article.

10. In cases where, pursuant to an investigation, it is considered reasonable to impose an anti-dumping duty at a rate less than the provisional anti-dumping duty, the amounts of the provisional anti-dumping duty equal to the amount of the anti-dumping duty calculated on the

basis of the established anti-dumping duty rate shall be transferred and distributed in accordance with the Article 6 of this Law.

The amounts of the provisional anti-dumping duty, which exceed the amount of the anti-dumping duty calculated on the basis of the established anti-dumping duty rate shall be refunded to the payer in accordance with legislations of the Republic of Kazakhstan.

11. In cases where, pursuant to an investigation, it is considered reasonable to impose an anti-dumping duty at a rate higher than the provisional anti-dumping duty, the difference between the anti-dumping duty and the provisional anti-dumping duty shall not be collected.

12. A provisional anti-dumping duty shall be applied subject to the simultaneous continuation of the investigation.

13. The decision to impose of a provisional anti-dumping duty, as a rule, shall be taken not later than 7 months from the date of the initiation of the investigation.

Article 18. Acceptance of price undertakings from exporter of the product subject to investigation

1. The investigating authority may suspend or terminate the investigation without the imposition of a provisional anti-dumping duty or an anti-dumping duty upon receipt of price undertakings from an exporter of the product subject to investigation to revise its prices for this product or to cease exports to the customs territory of the Eurasian Economic Union at prices less than its normal value (if there are parties related to the exporter in the Member States, applications indicating their support of the undertakings shall also be required from these parties), if the investigating authority concludes that these undertakings will remove the injury caused by dumped imports, and the decision to accept them is taken.

The level of prices for the product under such undertakings shall not be higher than necessary to offset the margin of dumping.

The price increase may be less than the margin of dumping, if such price increase is adequate to remove the injury to the domestic industry of the Member States.

2. The decision to accept price undertakings shall not be taken until the investigating authority has made a preliminary affirmative determination of dumped imports and injury caused by such imports to a domestic industry of the Member States.

3. Prior to the decision of Commission to approve the price undertakings, authorized body coordinate with interested government authorities of the Republic of Kazakhstan a proposal to approve the price undertakings specified in paragraph 1 of this Article, prepared by the investigating authority based on pre-trial detention.

4. The decision to accept price undertakings shall not be taken if the investigating authority concludes that their acceptance is impractical because the number of actual or potential exporters of the product subject to investigation is too great, or for other reasons.

Where practicable, the investigating authority shall provide to the exporters the reasons why the acceptance of their undertakings was considered as impractical, and shall give the exporters an opportunity to make comments thereon.

The investigating authority shall send to each exporter from whom price undertakings have been accepted a request for a non-confidential version thereof so that it may be made available to interested parties.

5. Price undertakings may be suggested to the exporter by the investigating authority, but no exporter shall be forced to enter into such undertakings.

6. In cases where price undertakings are accepted, the anti-dumping investigation may be continued upon request of the exporter of the product or if the investigating authority so decides.

In cases where, pursuant to an investigation, the investigating authority makes a negative determination of dumped imports or injury caused by such imports to a domestic industry of the Member States, the price undertakings from the exporter shall automatically lapse, except in cases where such a determination is due in large part to the existence of such undertakings. In cases where such a determination is due in large part to the existence of price undertakings, the decision that such undertakings shall be maintained for a necessary period of time in accordance with the paragraph 2 Article 20 of this Law.

7. In cases where, pursuant to an investigation, the investigating authority makes an affirmative determination of dumped imports and injury caused by such imports to a domestic industry of the Member States, the price undertakings from the exporter shall remain in force, consistent with their terms and the provisions of this Law.

8. The investigating authority may require the exporter from whom the price undertakings have been accepted to provide information relevant to the fulfilment of the price undertakings and to permit verification of this information.

Failure to provide requested information within the period established by the investigating authority and to permit verification of this information shall be construed as a violation of the price undertakings by the exporter.

9. In case of violation or withdrawal of price undertakings by the exporter, the decision to apply an anti-dumping measure by way of imposing a provisional anti-dumping duty (if the investigation has not been concluded yet) or an anti-dumping duty (if the final results of the investigation indicate that there are grounds for such imposition) is taken.

In case of violation of price undertakings by an exporter from which such undertakings were accepted, the exporter shall be given an opportunity to make comments on such a violation.

10. The decision to accept price undertakings shall set out a provisional anti-dumping duty rate or an anti-dumping duty rate, which may be imposed in accordance with paragraph 9 of this Article.

Article 19. Imposition and application of anti-dumping duty

1. An anti-dumping duty shall be applied to a product from all exporters found to be dumped and causing injury to a domestic industry of the Member States, except for a product from those exporters from which price undertakings have been accepted in accordance with Article 18 of this Law.

2. Prior to the decision of Commission on imposition of anti-dumping duty, authorized body coordinate with interested government authorities of the Republic of Kazakhstan a proposal to impose anti-dumping duty prepared by the investigating authority.

3. The amount of an anti-dumping duty shall be adequate to remove the injury to the domestic industry of the Member States but shall not exceed the margin of dumping.

The Commission may take a decision to impose an anti-dumping duty, which is less than the margin of dumping if such duty is adequate to remove the injury to the domestic industry of the Member States.

4. An individual anti-dumping duty rate shall be established in respect of the product from each exporter or producer of the imported dumped product for whom the individual margin of dumping has been determined.

5. Along with an individual margin of dumping indicated in paragraph 4 of this Article, a single anti-dumping duty rate shall be established on the product from all other exporters or producers of the product from the exporting third country for whom the individual margin of dumping has not been determined, on the basis of the highest margin of dumping established in the course of the investigation.

6. An anti-dumping duty may be applied to products, which were placed, not more than 90 calendar days prior to the date of imposition of a provisional anti-dumping duty, under a customs procedure that is conditional on the payment of anti-dumping duties if the investigating authority, pursuant to an investigation, has simultaneously determined for this product the following:

1) there is a history of dumped imports which caused injury or that the importer was, or should have been, aware that the exporter supplies a product at a price less than its normal value and that such imports would cause injury to a domestic industry of the Member States;

2) the injury to a domestic industry of the Member States is caused by massive dumped imports in a relatively short time which in light of the timing and the volume and other circumstances (including a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the anti-dumping duty to be imposed, provided that the importers of this product have been given an opportunity to comment before the completion of the investigation.

7. After the date of the initiation of the investigation, the investigating authority shall publish a notice on possible application of an anti-dumping duty to the product subject to investigation in accordance with paragraph 6 of this Article on Internet source of Eurasian Economic Union.

The decision to publish such a notice shall be taken by the investigating authority upon request of a domestic industry of the Member States, which contains sufficient evidence that the conditions specified in paragraph 6 of this Article are fulfilled, or at the initiative of the investigating authority in cases where such evidence is available to the investigating authority.

Anti-dumping duty shall not be applied to products, which were placed under a customs procedure that is conditional on the payment of anti-dumping duties before the official publication of a notice specified in this paragraph.

Article 20. Duration and review of anti-dumping measure

1. An anti-dumping measure shall be applied to the extent and as long as necessary to remove injury to a domestic industry of the Member States caused by dumped imports.

2. The duration of an anti-dumping measure shall not exceed 5 years from the date of the application of such measure or from the date of the conclusion of a review that was carried out on the basis of a change in circumstances and concerned both the examination of dumped imports and the injury to a domestic industry of the Member States caused by the dumped imports, or from the date of the conclusion of an expiry review.

3. An expiry review shall be initiated upon a written application filed in accordance with the Article 32 of this Law, or at the initiative of the investigating authority.

An expiry review shall be initiated when the application contains evidence that the dumped imports and the injury to the domestic industry of the Member States would be likely to recur or continue if the anti-dumping measure were removed.

The application for an expiry review shall be filed not later than 6 months prior the expiry of the anti-dumping measure.

A review shall be initiated prior to the expiry of an anti-dumping measure and concluded within 12 months from the date of the initiation of the review.

Prior to the completion of a review carried out in accordance with this paragraph, the period of application of the anti-dumping measure shall be extended. During the period for which the application of the respective anti-dumping measure is extended, in accordance with the procedure established for the collection of provisional anti-dumping duties, anti-dumping duties shall be levied at the rate established for the anti-dumping measure, whose duration is subject to extension.

In cases where, pursuant to an expiry review, the investigating authority establishes that there are no grounds for the application of an anti-dumping measure, or the decision not to apply an

anti-dumping measure is taken in accordance with the Article 42 of this Law, the amounts of the anti-dumping duty levied in accordance with the procedure established for the collection of provisional anti-dumping duties, during the period for which the application of the anti-dumping measure is extended, shall be refunded to the payer in accordance with the Article 6 of this Law.

Duration of an anti-dumping measure shall be extended in cases where, pursuant to an expiry review, the investigating authority establishes the likelihood of recurrence or continuation of dumped imports and injury to the domestic industry of the Member States. From the date of entry into force of the decision to extend the period of application of an anti-dumping measure, the amounts of anti-dumping duties levied in accordance with the procedure established for the collection of provisional anti-dumping duties, during the period for which the application of the anti-dumping measure is extended shall be transferred and distributed in accordance with the Article 6 of this Law.

4. For the purposes of determination whether the continued application of an anti-dumping measure is reasonable and/or for the purposes of reviewing the measure due to changed circumstances (including a review of an individual anti-dumping duty rate), a review may be initiated upon an application by an interested party or at the initiative of the investigating authority, provided that at least 1 year has elapsed since the imposition of an anti-dumping measure.

Depending on the purposes of filing an application for a review such an application shall include evidence that due to changed circumstances:

- 1) continued application of the anti-dumping measure is no longer necessary to offset dumping and remove injury to the domestic industry of the Member States caused by the dumped imports;
- 2) existing amount of an anti-dumping measure exceeds the amount sufficient to offset dumping and remove the injury to the domestic industry of the Member States caused by the dumped imports;
- 3) existing anti-dumping measure is insufficient to offset dumping and remove injury to the domestic industry of the Member States caused by the dumped imports.

A review carried out in accordance with this paragraph shall be concluded within 12 months from the date of the initiation of the review.

5. A review may also be carried out for the purposes of determining an individual margin of dumping for an exporter or producer who did not export the product subject to investigation during the original period of investigation.

Such review may be initiated by the investigating authority in cases where such exporter or producer files an application which includes evidence that the exporter or producer of the product is not related to the exporters or producers subject to the anti-dumping measure, and that this exporter or producer exports the product subject to investigation to the customs territory of the Eurasian Economic Union or is bound by contractual obligations to export substantial volumes of this product to the customs territory of the Eurasian Economic Union of such kind that their termination or withdrawal will lead to significant losses or substantial penalties for this exporter or producer of the product.

While a review is being carried out for the purposes of determining an individual margin of dumping for an exporter or producer of the product subject to investigation to the customs territory of the Eurasian Economic Union, this exporter or producer shall not pay the anti-dumping duty until, pursuant to the review, a decision is taken. A security for the anti-dumping duty shall be provided for imports of such product into the customs territory of the Eurasian Economic Union during the review in accordance with the procedures specified in the Customs Code of the Eurasian Economic Union, taking into account the particularities set out in this paragraph.

The security shall take the form of liquid funds (money) in the amount of the anti-dumping duty calculated on the basis of a single anti-dumping duty rate established in accordance with the Article 6 of this Law.

In cases where, pursuant to a review, a decision to apply an anti-dumping measure is taken, an anti-dumping duty shall be paid for the period within which such review was carried out. The amount of the security, from the date on which, pursuant to the review, the decision to apply an anti-dumping measure enters into force, shall form part of the payment of an anti-dumping duty in the amount determined on the basis of the established anti-dumping duty rate, and shall be transferred and distributed in accordance with the Article 6 of this Law, taking into account the provisions of this paragraph.

In cases where, pursuant to a review, it is considered appropriate to impose an anti-dumping duty at a rate higher than the amount estimated for the purposes of the security, the difference shall not be collected.

The amount of a security that is higher than the amount of the anti-dumping duty calculated on the basis of the established anti-dumping duty rate shall be refunded to the payer in accordance with the Article 6 of this Law.

A review under this paragraph shall be carried out expeditiously within a period of 12 months.

6. Provisions of Chapter 5 of this Law concerning the evidence and the conduct of an anti-dumping investigation shall apply mutatis mutandis to reviews specified in paragraphs 1-7 of this Article.

7. Provisions of the paragraphs 1-6 of this Article shall apply mutatis mutandis to price undertakings from an exporter in accordance with the Article 18 of this Law.

Article 21. Circumvention of Anti-Dumping Measure

1. Circumvention of an anti-dumping measure shall be understood as a change in the mode of supply in order to evade the payment of an anti-dumping duty or the fulfilment of price undertakings accepted from the exporter.

2. An anti-circumvention review may be initiated upon an application by an interested party or at the initiative of the investigating authority.

3. The application indicated in paragraph 2 of this Article shall include evidence of:

1) circumvention of an anti-dumping measure;

2) the undermining of the remedial effect of the anti-dumping measure, as a result of circumvention, and its impact on the volume of production and/or sales, and/or on prices for the like product in the domestic market of the Member States;

3) the existence of dumped imports of the product (parts and/or modifications of such product). The normal value of the product, parts or modifications thereof shall be their normal value determined in the course of an investigation pursuant to which the anti-dumping measure was imposed, appropriately adjusted for the purposes of comparison.

4. The anti-circumvention review shall be concluded within 9 months from the date of the initiation of the review.

5. For the period of a review carried out in accordance with this Article an anti-dumping duty maybe imposed, which shall be levied in accordance with the procedure established for the collection of provisional anti-dumping duties, on parts and/or modifications of the dumped product imported into the customs territory of the Eurasian Economic Union from the exporting third country, and on the dumped product, and/or parts and/or modifications thereof imported into the customs territory of the Eurasian Economic Union from any other exporting third country.

6. In cases where, pursuant to a review carried out in accordance with this Article, the investigating authority has not determined circumvention of an anti-dumping measure, the amounts of the anti-dumping duty paid pursuant to this Article and in accordance with the procedure established for the collection of provisional anti-dumping duties, shall be refunded to the payer in accordance with the Article 6 of this Law.

7. In cases where, pursuant to a review carried out in accordance with this Article, circumvention of an anti-dumping measure has been determined, an anti-dumping measure may be extended to parts and/or modifications of the product that was dumped which are imported into the customs territory of the Eurasian Economic Union from the exporting third country, and to the product that was dumped, and/or parts and/or modifications thereof imported into the customs territory of the Eurasian Economic Union from any other exporting third country. From the date of entry into force of the decision to impose an anti-dumping measure indicated in this paragraph, the amounts of anti-dumping duties paid in accordance with the procedure established for the collection of provisional anti-dumping duties shall be transferred and distributed in accordance with the Article 6 of this Law.

IV. Countervailing measures

Article 22. General principles for the use of countervailing measures

Countervailing measure may be applied to imported goods in the process of production, export or transportation of which is used a specific subsidy of the exporting third country, if the results of the investigation conducted by the investigating authority established that the import of such product into the customs territory of the Eurasian Economic Union causes material injury to domestic industries of the Member States and poses a threat of causing such injury or substantial slowdown in creation of domestic industry of the Member States.

Article 23. Subsidies

Subsidies shall mean:

1) a financial contribution by a granting authority conferring a benefit on the recipient of a subsidy, rendered within the territory of an exporting third country, including in the form of:

- a direct transfer of funds (including grants, loans, and equity infusion) or potential direct transfers of funds or liabilities (including loan guarantees);
- government revenue of a third exporting country that is otherwise due is foregone or not collected (including the provision of tax credits), excluding the exemption of an exported product from taxes and duties levied on the like product destined for domestic consumption, or excluding reduction or refund of such taxes or duties in the amounts not exceeding the amounts actually paid;
- provision of concessionary or free goods or services, excluding goods and services intended to maintain and develop general infrastructure, i.e. the infrastructure that is not related to a specific producer and/or exporter;
- preferential purchase of goods.

2) any form of income or price support conferring a benefit on the recipient of a subsidy which operates directly or indirectly to increase exports of a product from an exporting third country or to reduce imports of the like product into this third country.

Article 24. Principles of determining specificity of subsidy of exporting third country

1. A subsidy of an exporting third country shall be specific if access to a subsidy is limited to certain enterprises by the granting authority or by the legislation of an exporting third country. Certain enterprises shall mean a producer and/or an exporter, or an industry of an exporting third country, or a group (union, association) of producers and/or exporters or industries of an exporting third country.

A subsidy, which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority, shall be specific.

2. A subsidy shall not be specific if the legislation of an exporting third country or the granting authority establishes general objective criteria or conditions, which govern the eligibility for, and the amount of, a subsidy (including number of employees engaged in the production process or the volume of output) and are strictly adhered to.

3. In any case, a subsidy of an exporting third country shall be specific if the granting of such a subsidy is accompanied by:

1) the use of a subsidy by a limited number of certain enterprises;

2) the predominant use of a subsidy by certain enterprises;

3) the granting of disproportionately large amounts of subsidy to certain enterprises;

4) the preferential manner in which discretion is exercised by the granting authority in the decision to grant a subsidy to certain enterprises.

4. Any subsidy of exporting third country is a specific subsidy, if:

1) a subsidy is contingent, in the law of an exporting third country or in fact, whether solely or as one of several other conditions, upon export performance. A subsidy shall be deemed to be contingent in fact upon export performance if the granting of a subsidy, without having been made contingent upon export performance in the law of an exporting third country, is in fact tied to actual or potential exportation of a product or export earnings. The mere fact that a subsidy is granted to enterprises, which export, shall not for that reason alone mean a subsidy contingent upon export performance within the meaning of this paragraph;

2) a subsidy is contingent, in the law of an exporting third country or in fact, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Article 25. Principles of calculation of amount of specific subsidy

1. The amount of a specific subsidy shall be calculated based on the benefit to the recipient of such subsidy.

2. The amount of the benefit to the recipient of a specific subsidy shall be calculated based on the following principles:

1) equity capital by the granting authority shall not be considered as conferring a benefit, unless such equity capital can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) in the territory of the exporting third country;

2) a loan by a granting authority shall not be considered as conferring a benefit if there is no difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the loan market of the exporting third country. Otherwise, the benefit shall be the difference between these two amounts;

3) a loan guarantee by a granting authority shall not be considered as conferring a benefit if there is no difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the granting authority and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. Otherwise, the benefit shall be the difference between these two amounts adjusted for any differences in fees;

4) the provision of goods or services or purchase of goods by a granting authority shall not be considered as conferring a benefit, unless the provision of goods or services is made for less than adequate remuneration, or the purchases is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to existing market conditions for purchase and sale of these goods and services in the exporting third country, including price, quality, availability, marketability, transportation and other conditions of purchase or sale of the good.

Article 26. Determination of injury to domestic industry of Member States by subsidized imports shall mean material injury to a domestic industry of the Member States, threat of material injury or material retardation of the establishment of a domestic industry in the Member States

1. Injury to a domestic industry of the Member States caused by subsidized imports shall be determined based on examination of the volume of the subsidized imports, the effect of such imports on prices in the domestic market of the Member States for the like product and the impact of such imports on domestic producers of the like product in the Member States.

2. The period of investigation, for which the evidence is examined for the purposes of determination of injury to the domestic industry of the Member States caused by subsidized imports, shall be established by the investigating authority.

3. With regard to the examination of the volume of the subsidized imports, the investigating authority shall consider whether there has been a significant increase in subsidized imports of the product subject to investigation (in absolute terms or relative to production or consumption of the like product in the Member States).

4. In cases where subsidized imports of a product from more than one exporting third country into the customs territory of the Eurasian Economic Union are simultaneously subject to investigations, the investigating authority may cumulatively assess the effects of such imports only if it determines the following:

1) the amount of subsidization established in relation to the imports from each exporting third country for that product is more than 1 percent of its value, and the volume of imports from each exporting third country is not negligible in accordance with paragraph 4 Article 35 of this Law;

2) a cumulative assessment of the effects of the subsidized imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product produced in the Member States.

5. With regard to the examination of the effect of the subsidized imports on prices for the like product in the domestic market of the Member States, the investigating authority shall consider whether:

1) there has been a significant price undercutting by the subsidized imports as compared with the price of the like product in the domestic market of the Member States;

2) the subsidized imports have depressed prices of the like product in the domestic market of the Member States to a significant degree;

3) the subsidized imports have prevented price increases of the like product in the domestic market of the Member States, which would have occurred in the absence of such imports, to a significant degree.

6. The examination of the impact of the subsidized imports in the domestic industry of the Member States shall include an evaluation of all relevant economic factors having a bearing on the state of the industry of the Member States, including:

1) actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity;

2) factors, affecting domestic prices;

3) actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise investments.

7. The effect of the subsidized imports on the domestic industry of the Member States shall be assessed in relation to the domestic production of the like product in the Member States when available data permit the separate identification of the production of the like product on the basis of such criteria as the production process, producers' sales of the like product and profits.

If such available data does not permit the separate identification of the production of the like product, the effects of the subsidized imports on the domestic industry of the Member States shall be assessed in relation to the production of the narrowest group or range of products, which includes the like product, for which the necessary information is available.

8. In making a determination of a threat of material injury to a domestic industry of the Member States caused by subsidized imports, the investigating authority should consider any available factors, including the following:

- 1) nature, the amount of the subsidy or subsidies and the trade effects likely to arise therefrom;
- 2) the rate of increase of subsidized imports in the domestic market indicating the likelihood of substantially increased importation;
- 3) sufficient freely disposable, or an imminent increase in, capacity of the exporter indicating the likelihood of increased subsidized imports, taking into account the availability of other export markets to absorb any additional exports;
- 4) prices for the product subject of subsidized imports, whether such prices will have depressing or suppressing effect on the prices of the like product at the domestic market of the Member States, and would likely increase demand for further subsidized imports;
- 5) the exporter's inventories of the imported subsidized product.

9. The determination of a threat of material injury to a domestic industry of the Member States shall be made in cases where during the course of the investigation, pursuant to an examination of the factors set out in paragraph 9 of this Article, the investigating authority concluded that further subsidized imports are imminent and that, unless countervailing measures are taken, material injury to the domestic industry of the Member States caused by such imports would occur.

10. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry of the Member States shall be based on an examination of all relevant evidence and information before the investigating authority.

11. The investigating authority shall also examine any known factors other than the subsidized imports, which at the same time are injuring the domestic industry.

The injury caused by these other factors to the domestic industry of the Member States must not be attributed to the injury to the domestic industry of the Member States caused by the subsidized imports into the customs territory of the Eurasian Economic Union.

Article 27. Imposition of provisional countervailing duty

1. In cases where the evidence received by the investigating authority before the conclusion of the investigation indicates that there are subsidized imports and that there is injury to a domestic industry of the Member States caused by such imports, the Commission shall take a decision to apply a countervailing measure by way of imposing a provisional countervailing duty for a period not exceeding 4 months to prevent injury being caused to the domestic industry of the Member States by the subsidized imports during the investigation.

2. Prior to the decision of Commission on imposition a provisional countervailing duty authorized body shall coordinate with interested government authorities of the Republic of Kazakhstan a proposal to impose a provisional countervailing duty prepared by the investigating authority based on pre-trial detention.

3. A provisional countervailing duty shall not be imposed sooner than 60 calendar days from the date of the initiation of the investigation.

4. The amount of a provisional countervailing duty shall be equal to the provisionally calculated amount of subsidization per unit of the subsidized and exported product.

5. In cases where the investigating authority determines that there are no grounds for the imposition of a countervailing measure, or the decision not to apply a countervailing measure is taken in accordance with the Article 42 of this Law, the amounts of the provisional countervailing duty shall be refunded to the payer in accordance with the legislations of the Republic of Kazakhstan.

6. In cases where, pursuant to an investigation, the decision to apply a countervailing measure is taken on the basis of a threat of injury or material retardation of the establishment of a domestic industry of the Member States, the amounts of the provisional countervailing duty shall be refunded to the payer in accordance with the Article 6 of this Law.

7. In cases where, pursuant to an investigation, the decision to apply a countervailing measure is taken on the basis of material injury to a domestic industry of the Member States or a threat thereof (provided that the non-imposition of a provisional countervailing duty would have led to a determination of material injury to the domestic industry of the Member States) from the date of entry into force of the decision to apply the countervailing measure, the amounts of the provisional countervailing duty shall be transferred and distributed in accordance with the procedure specified in the Article 6 of this Law, taking into account the provisions of paragraphs 8 and 9 of this Article.

8. In cases where, pursuant to an investigation, it is considered reasonable to impose a countervailing duty at a rate less than the provisional countervailing duty, the amounts of the provisional countervailing duty equal to the amount of the countervailing duty calculated based on the established countervailing duty rate shall be transferred and distributed in accordance with the Article 6 of this Law.

The amounts of the provisional countervailing duty, which exceed the amount of the countervailing duty calculated on the basis of the established countervailing duty rate shall be refunded to the payer in accordance with the legislations of the Republic of Kazakhstan.

9. In cases where, pursuant to an investigation, it is considered reasonable to impose a countervailing duty at a rate higher than the provisional countervailing duty, the difference between the countervailing duty and the provisional countervailing duty shall not be collected.

10. A provisional countervailing duty shall be applied subject to the simultaneous continuation of the investigation.

11. The decision to impose a provisional countervailing duty, as a rule, shall be taken not later than 7 months from the date of the initiation of the investigation.

Article 28. Acceptance of voluntary undertakings from subsidizing Third country or exporter of product subject to investigation

1. The investigation may be suspended or terminated without the imposition of a countervailing duty if the Commission takes a decision to accept one of the following voluntary undertakings (in writing) received by the investigating authority:

1) the exporting third country agrees to eliminate or limit the subsidy or take other measures concerning its effects;

2) the exporter of the product subject to investigation agrees to revise its prices for such product (if there are parties related to the exporter in the Member States, then to ensure support of these parties of the undertaking of the exporter to revise prices) so that, as a result of an examination of the price undertakings from the exporter, the investigating authority concludes that such voluntary undertakings will eliminate the injury to the domestic industry of the Member States.

The increase of the price for the product subject to investigation under such undertakings shall not be higher than the amount of a specific subsidy in the exporting third country calculated per unit of the subsidized and exported product.

The increase of the price for the product subject to investigation may be less than the amount of a specific subsidy of the exporting third country calculated per unit of the subsidized and exported product if such increase is adequate to remove the injury to the domestic industry of the Member States.

2. Prior to the decision of Commission on the approval of voluntary commitments the authorized body coordinate with interested government authorities of the Republic of Kazakhstan proposal on the endorsement of voluntary commitments indicated in paragraph 1 of this article prepared by the investigating authority.

3. The decision to accept voluntary undertakings shall not be taken by the Commission until the investigating authority has made a preliminary affirmative determination of subsidized imports and injury caused by such imports to a domestic industry of the Member States.

The decision to accept voluntary undertakings from the exporter of the product subject to investigation shall not be taken by the Commission unless it has obtained the consent of the authorized body of the exporting third country for the acceptance of undertakings from the exporters specified in subparagraph 2 of paragraph 1 of this Article.

4. The decision to accept voluntary undertakings shall not be taken by the Commission if the investigating authority concludes that their acceptance is impractical because the number of actual or potential exporters of the product subject to investigation is too great, or for other reasons.

Where practicable, the investigating authority shall provide to the exporters the reasons why the acceptance of their undertakings was considered as impractical, and shall give the exporters an opportunity to make comments thereon.

5. The investigating authority shall send to each exporter and to the authorized body of the third exporting country from whom voluntary undertakings have been accepted a request for a non-confidential version thereof so that it may be made available to interested parties.

6. Voluntary undertakings may be suggested to the exporting third country or the exporter of the product subject to investigation by the investigating authority, but no exporting third country or exporter shall be forced to enter into such undertakings.

7. In cases where the Commission takes a decision to accept voluntary undertakings, the countervailing investigation may be continued upon request of the exporting third country or if the investigating authority so decides.

In cases where, pursuant to an investigation, the investigating authority makes a negative determination of subsidized imports or injury caused by such imports to a domestic industry of the Member States, the voluntary undertakings from the exporting third country or exporters shall automatically lapse, except in cases where such a determination is due in large part to the existence of such undertakings. In cases where such a determination is due in large part to the existence of voluntary undertakings, the Commission may take a decision that such undertakings be maintained for a necessary period of time.

8. In cases where, pursuant to an investigation, the investigating authority makes an affirmative determination of subsidized imports and injury caused by such imports to a domestic industry of the Member States, the voluntary undertakings shall remain in force, consistent with their terms and the provisions of this Law.

9. The investigating authority may require the exporting third country or the exporter from whom voluntary undertakings have been accepted by the Commission to provide information relevant to the fulfilment of the voluntary undertakings and to permit verification of this information.

Failure to provide requested information within the period established by the investigating authority and to permit verification of this information shall be deemed as a violation of the voluntary undertakings by the exporting third country or the exporter.

10. In case of violation or withdrawal of voluntary undertakings by the exporting third country or the exporter, the Commission may take a decision to apply a countervailing measure by way of imposing a provisional countervailing duty, if the investigation has not been concluded yet, or a countervailing duty, if the final results of the investigation indicate that there are grounds for such imposition.

In case of violation of voluntary undertakings by the exporting third country or the exporter, the exporting third country or the exporter shall be given the opportunity to make comments on such a violation.

11. The decision to accept voluntary undertakings taken by the Commission shall set out a provisional countervailing duty rate or a countervailing duty rate, which may be imposed in accordance with paragraph 10 of this Article.

Article 29. Imposition and application of countervailing duty

1. The decision to impose a countervailing duty shall not be taken by the Commission if the specific subsidy of the exporting third country has been withdrawn.

2. Prior to the decision of Commission on the application of countervailing duties the authorized body coordinate with interested government authorities of the Republic of Kazakhstan proposal to impose a countervailing duty, prepared by the investigating authority.

3. The decision to impose a countervailing duty shall be taken after the exporting third country granting the specific subsidy has rejected the proposal to hold consultations, or during the consultations, no mutually acceptable solution has been reached.

4. A countervailing duty shall be applied to a product from all exporters, which is subsidized and causing injury to a domestic industry of the Member States (except for a product from those exporters from which voluntary undertakings have been accepted by the Commission).

An individual countervailing duty rate may be established by the Commission in respect of products from particular exporters.

5. A countervailing duty rate shall not be in excess of the amount of specific subsidy of the exporting third country, calculated per unit in terms of subsidized and exported product.

In cases where subsidies are granted in accordance with different subsidization programs, their cumulative amount shall be taken into consideration.

A countervailing duty rate may be less than the amount of the specific subsidy of the exporting third country if such rate is adequate to remove the injury to the domestic industry of the Member States.

6. When the amount of a countervailing duty rate is being established, written opinions submitted to the investigating authority by consumers in the Member States whose economic interests can be affected by the imposition of a countervailing duty shall be taken into consideration.

7. A countervailing duty may be applied to products, which were placed, not more than 90 calendar days prior to the date of imposition of a provisional countervailing duty, under a customs procedure that is conditional on the payment of a countervailing duty if the investigating authority, pursuant to an investigation, has simultaneously determined for this product the following:

1) injury which is difficult to repair is caused by massive imports in a relatively short period of time of the product benefiting from specific subsidies paid or granted;

2) it is necessary, in order to prevent the recurrence of such injury, to apply a countervailing duty to the imported product specified in subparagraph 1 of this paragraph.

8. After the date of the initiation of the investigation, the investigating authority shall publish in the Internet source of Eurasian Economic Union a notice on possible application of a countervailing duty to the product subject to investigation in accordance with paragraph 7 of this Article.

The decision to publish such a notice shall be taken by the investigating authority upon request of a domestic industry of the Member States, which contains sufficient evidence that the conditions specified in paragraph 7 of this Article are fulfilled, or on its own initiative in cases where such evidence is available to the investigating authority.

No countervailing duty shall be applied to the products, which were placed under a customs procedure that is conditional on the payment of a countervailing duty prior to the date of official publication of the notice specified in this paragraph.

Article 30. Duration and review of countervailing measure

1. A countervailing measure shall be applied pursuant to a decision of the Commission to the extent and as long as necessary to remove injury to a domestic industry of the Member States caused by subsidized imports.

2. The duration of a countervailing measure shall not exceed 5 years from the date of the application of such measure or from the date of the conclusion of review that was carried out on the basis of a change in circumstances and concerned both the examination of subsidized imports and the injury to a domestic industry of the Member States caused by the subsidized imports, or from the date of the conclusion of an expiry review.

3. An expiry review shall be initiated upon a written application filed in accordance with the Article 32 of this Law, or on the own initiative of the investigating authority.

An expiry review shall be initiated when the application contains evidence that the subsidized imports and the injury to the domestic industry of the Member States would be likely to recur or continue if the countervailing measure were removed.

The application for an expiry review shall be filed not later than 6 months prior to the expiry of the countervailing measure.

A review shall be initiated prior to the expiry of a countervailing measure and concluded within 12 months from the date of the initiation of the review.

Prior to the conclusion of a review carried out in accordance with this paragraph, the period of application of the countervailing measure shall be extended pursuant to a decision of the Commission. During the period for which the application of the respective countervailing measure is extended, in accordance with the procedure established for the collection of provisional countervailing duties, countervailing duties shall be levied at the rate established for the countervailing measure, whose duration is subject to extension.

In cases where, pursuant to an expiry review, the investigating authority establishes that there are no grounds for the application of a countervailing measure, or the decision not to apply a countervailing measure is taken in accordance with the Article 42 of this Law, the amounts of the countervailing duty levied in accordance with the procedure established for the collection of provisional countervailing duties, during the period for which the application of the countervailing measure is extended, shall be refunded to the payer in accordance with legislations of the Republic of Kazakhstan.

Duration of a countervailing measure is to be extended by the Commission in cases where, pursuant to an expiry review, the investigating authority establishes the likelihood of recurrence or continuation of the subsidized imports and injury to the domestic industry of the Member States. From the date of entry into force of a decision of the Commission to extend the period of application of a countervailing measure, the amounts of countervailing duties levied in accordance

with the procedure established for the collection of provisional countervailing duties, during the period for which the application of the countervailing measure is extended, shall be transferred and distributed in accordance with the procedure specified in the Article 6 of this Law.

4. For the purposes of determination whether the continued application of a countervailing measure is appropriate and/or for the purposes of reviewing the measure due to changed circumstances (including a review of an individual countervailing duty rate), a review may be initiated upon an application by an interested party or at the initiative of the investigating authority, provided that at least 1 year has elapsed since the imposition of a countervailing measure.

Depending on the purposes of filing an application for a review such application shall include evidence that due to changed circumstances:

1) continued application of the countervailing measure is no longer necessary to offset the subsidized imports and remove injury to the domestic industry of the Member States caused by the subsidized imports;

2) existing amount of a countervailing measure exceeds the amount sufficient to offset the subsidized imports and remove injury to the domestic industry of the Member States caused by the subsidized imports;

A review due to changed circumstances shall be concluded within 12 months from the date of the initiation of the review.

5. Provisions of section 5 of this Law, concerning evidence and conduct of an investigation shall apply mutatis mutandis to reviews, provided by this Article, subject to corresponding differences.

6. The provisions of this Article shall apply mutatis mutandis to undertakings accepted from an exporting third country or an exporter in accordance with the Article 28 of this Law, subject to corresponding differences.

7. A review may also be carried out for the purposes of determining an individual countervailing duty rate for an exporter subject to a countervailing measure who was not investigated for reasons other than a refusal to cooperate. Such a review may be initiated by the investigating authority upon a request of this exporter.

Article 31. Circumvention of countervailing measure

1. Circumvention of a countervailing measure shall be understood as a change in the mode of supply in order to evade the payment of a countervailing duty or the fulfilment of voluntary undertakings.

2. An anti-circumvention review may be initiated upon an application by an interested party or at the initiative of the investigating authority.

3. The application indicated in paragraph 2 of this Article shall include the evidence of:

1) circumvention of a countervailing measure;

2) the undermining of the remedial effect of the countervailing measure (as a result of circumvention) and its impact on the volume of production and/or sales, and/or prices for the like product in the domestic market of the Member States;

3) the continued existence of the benefit conferred on the producer and/or the exporter of the product (parts and/or modifications of such product) by the specific subsidy granted.

4. For the period of the review carried out in accordance with this Article, the Commission may impose a countervailing duty, which shall be levied in accordance with the procedure established for the collection of provisional countervailing duties, on parts and/or modifications of the subsidized product which are imported into the customs territory of the Eurasian Economic Union

from the exporting third country, and on the subsidized product and/or parts and/or modifications thereof imported into the customs territory of the Eurasian Economic Union from any other exporting third country.

5. In cases where, pursuant to a review carried out in accordance with this Article, the investigating authority has not determined circumvention of a countervailing measure, the amounts of a countervailing duty paid pursuant to this Article and in accordance with the procedure established for the collection of provisional countervailing duties, shall be refunded to the payer in accordance with legislations of the Republic of Kazakhstan.

6. In cases where, pursuant to a review carried out in accordance with this Article, circumvention of a countervailing measure has been determined, the countervailing measure may be extended to imported parts and/or modifications of the subsidized product which are imported into the customs territory of the Eurasian Economic Union from the exporting third country, and to the subsidized product and/or parts and/or modifications thereof, imported into the customs territory of the Eurasian Economic Union from any other exporting third country. From the entry into force of the decision of the Commission to impose a countervailing measure indicated in this paragraph, the amounts of countervailing duties paid in accordance with the procedure established for the collection of provisional countervailing duties, shall be transferred and distributed in accordance with the Article 6 of this Law.

7. The anti-circumvention review shall be concluded within 9 months from the date of the initiation of the review.

Chapter V. Conducting investigations

Article 32. Basis for investigation

1. An investigation for the purposes of determination of the existence of increased imports and serious injury or threat thereof caused to a domestic industry of the Member States as well as for the purposes of determination of dumped or subsidized imports and material injury, threat thereof caused to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States, shall be carried out by the investigating authority on the basis of a written application or at the initiative of the investigating authority in accordance with the paragraph 2 of this Article.

2. The application indicated in paragraph 1 of this Article shall be filed by:

1) a producer of the like or directly competitive product (when the application to apply a safeguard measure is submitted) or the like product (when the application for an anti-dumping or a countervailing measure is submitted) in the Member States or by their authorized representative;

2) an association of producers which includes producers whose collective output constitutes a major proportion, but not less than 25 percent, of the total volume of production of the like or directly competitive product (when the application for a safeguard measure is submitted) or the like product (when the application to apply an anti-dumping or a countervailing measure is submitted) in the Member States or by an authorized representative of such association.

The authorized representatives of producers and associations shall have duly certified and documented authority; the originals of respective documents shall be submitted to the investigating authority together with the application.

3. The application shall be accompanied by evidence of support for the application by producers of the like or directly competitive product or the like product in the Member States. The following shall be considered as sufficient evidence of support:

1) documents confirming that other producers of the like or directly competitive product in the Member States who together with the applicant account for the major proportion, but not less than 25 percent, of the total volume of production of the like or directly competitive product in the Member States join the application (when the application to apply a safeguard measure is submitted);

2) documents confirming that the producers in the Member States (including the applicant) supporting the application account for at least 25 percent of the total production volume of the like product in the Member States, provided that the collective output of the producers in the Member States (including the applicant) supporting the application constitutes more than 50 percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application (when the application to apply an anti-dumping or countervailing measure is submitted).

4. The application indicated in paragraph 1 of this Article shall contain:

1) information on the applicant, the volume and value of the production of the like or directly competitive product (when the application for a safeguard measure is submitted), the like product (when the application for an anti-dumping or countervailing measure is submitted) by the domestic industry of the Member States for 3 years preceding the date of filing the application, as well as on the volume and value of the production of the like or directly competitive product (when the application to apply a safeguard measure is submitted) or the like product (when the application to apply an anti-dumping or countervailing measure is submitted) by producers in the Member States supporting the application, and on their share in the total volume of production of the like or directly competitive product when the application to apply a safeguard measure is submitted) or the like product (when the application to apply an anti-dumping or countervailing measure is submitted) in the Member States;

2) a description of the product imported into the customs territory of the Eurasian Economic Union on which it is proposed to impose a safeguard, anti-dumping or countervailing measures, with the indication of its code in the Customs Nomenclature of the Foreign Economic Activity of the Eurasian Economic Union;

3) the names of exporting third countries of origin or export of the product indicated in subparagraph 2 of this paragraph based on the customs statistics;

4) information on known producers and/or exporters of the product indicated in subparagraph 2 of this paragraph in the exporting third country, and on known importers and main known consumers of the product in the Member States;

5) information on the changes in the volume of imports of the product into the customs territory of the Eurasian Economic Union on which it is proposed to impose a safeguard, anti-dumping or countervailing measure, for the previous period as well as for the subsequent period for which representative statistics are available as of the date of filing the application;

6) information on the changes in the volume of exports of the like or directly competitive product (when the application for a safeguard measure is submitted) or the like product (when the application for an anti-dumping or countervailing measure is submitted) from the customs territory of the Eurasian Economic Union, for the previous period as well as for the subsequent period for which representative statistics are available as of the date of filing the application.

5. Along with the information indicated in paragraph 4 of this Article depending on the type of measure proposed in the application, the applicant shall include the following:

1) evidence of increased imports of the product, evidence of serious injury or threat thereof to a domestic industry of the Member States caused by the increased imports of the product, a proposal to impose a safeguard measure with the indication of its amount and the period of application, as well as the action plan for the adjustment of the domestic industry of the Member States to conditions of foreign competition during the period of application of the safeguard measure proposed by the applicant (when the application for a safeguard measure is submitted);

2) information on export price and normal value of the product, evidence of material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States caused by the dumped imports of the product, as well as a proposal to impose an anti-dumping measure with the indication of its extent and the period of application (when the application for an anti-dumping measure is submitted);

3) information on the existence and nature of a specific subsidy of the exporting third country and, if possible, its amount, evidence of material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States caused by the subsidized imports of the product, as well as a proposal to impose a countervailing measure with the indication of its amount and the period of application (when the application to apply an anti-dumping a countervailing measure is submitted).

6. The evidence of the existence of serious injury or threat thereof to a domestic industry of the Member States (when the application to apply a safeguard measure is submitted) and the evidence of material injury or threat thereof to a domestic industry of Member States or material retardation of the establishment of a domestic industry of the Member States caused by the dumped imports or subsidized imports (when the application to apply an anti-dumping or countervailing measure is submitted) shall be based on objective factors relative to the economic situation of a domestic industry of the Member States, and shall be expressed in quantitative and/or value terms for the previous period as well as for the subsequent period for which representative statistics are available as of the date of filing the application (including the volume of production and the sales volume of the product, the share of the product in the domestic market of the Member States, the cost of production of the product, the price of the product, utilization of capacity, employment, labor productivity, profit margins, profitability, the volume of investment in the domestic industry of the Member States).

7. The information provided in the application shall be accompanied by the reference to the source.

8. For the purposes of comparability, a single monetary unit and a single unit of quantity shall be used for the indicators contained in the application.

9. The information contained in the application shall be certified by managing directors of the producers that provided such information as well as by their employees responsible for accounting and financial reporting, insofar as information, which directly relates to the producers in question is concerned.

10. The application with an enclosed non-confidential version thereof (if the application contains confidential information) shall be submitted to the investigating authority in accordance with paragraph 24 Article 33 of this Law and shall be subject to registration on the day of receipt of the application.

11. The date of filing the application shall be the date of registration thereof in the investigating authority.

12. The application for a safeguard, anti-dumping or countervailing measure shall be rejected on the following grounds:

1) failure to submit information specified in paragraphs 3-5 of this Article when filing the application;

2) submission by the applicant of information specified in paragraphs 3-5 of this Article which is inaccurate;

3) failure to submit a non-confidential version of the application.

The rejection of the application on other grounds shall not be permitted.

Article 33. Initiation and Subsequent Investigation

1. Before the decision to initiate an investigation is taken, the investigating authority shall notify the exporting third country in writing of the receipt of an application for an anti-dumping or countervailing measure prepared in accordance with paragraphs 32 of this Law.

2. Before the decision to initiate an investigation is taken, the investigating authority shall examine the adequacy and accuracy of the evidence and information contained in the application in

accordance with paragraphs 3-5 Article 32 of this Law within 30 calendar days from the date of the registration of the application. This period may be extended if the investigating authority require additional information, but shall not exceed 60 calendar days.

3. The application may be withdrawn by the applicant prior to the initiation of an investigation or in the course of the investigation.

The application shall be considered not to have been filled if it is withdrawn before the initiation of an investigation.

If the application is withdrawn in the course of the investigation, the investigation shall be terminated without the imposition of a safeguard, anti-dumping or countervailing measure.

4. The information contained in the application shall not be subject to public disclosure before the decision to initiate an investigation is taken.

5. The investigating authority shall take a decision to initiate or refuse to carry out an investigation before the expiry of the period indicated in paragraph 2 of this Article.

6. When the decision to initiate an investigation is taken, the investigating authority shall notify in writing the authorized body of the exporting third country as well as other interested parties known to it of the decision taken, and, within not more than 10 business days from the date of taking this decision, shall give a public notice of the initiation of an investigation on Internet source of Eurasian Economic Union.

7. The publication date of the notice of the initiation of an investigation on the Internet source of Eurasian Economic Union shall be the date of the initiation of the investigation.

8. The investigating authority may take the decision to initiate an investigation (including on its own initiative) only if it has evidence of the existence of increased imports and serious injury or threat thereof caused to a domestic industry of the Member States, or of the existence of dumped or subsidized imports and material injury or threat thereof to a domestic industry of Member States or material retardation of the establishment of a domestic industry of the Member States.

In cases where the available evidence is insufficient, such an investigation shall not be initiated.

9. The decision to refuse to carry out an investigation shall be taken if the investigating authority, upon examination of the application, determines that the information submitted in accordance with paragraphs 4 and 5 Article 32 of this Law does not indicate the existence of increased, dumped or subsidized imports of the product into the customs territory of the Eurasian Economic Union and/or material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States caused by the dumped or subsidized imports, or the existence of serious injury or threat thereof to a domestic industry of the Member States caused by the increased imports into the customs territory of the Eurasian Economic Union.

10. When the decision to refuse to carry out an investigation is taken, the investigating authority shall notify the applicant in writing of the reason for the refusal to carry out an investigation within no more than 10 calendar days from the date of taking such decision.

11. Interested parties shall have the right to state their intention to participate in the investigation in writing within the period established by this Law. They are recognized as participants in the investigation from the date of the registration of their statement of intent to participate in the investigation by the investigating authority.

The applicant and producers in the Member States who have expressed their support for the application shall be recognized as participants in the investigation from the date of the initiation of the investigation.

12. Interested parties shall have the right to submit information (including confidential information) required for investigation purposes with the indication of the source of such information.

13. The investigating authority shall have the right to request from the interested party additional information for the purposes of investigation.

Requests may also be sent to other organizations in the Member States.

The requests shall be sent by the director (deputy director) of the investigating authority.

The request shall be deemed to have been received by the interested party upon its transmission to the authorized representative of the interested party or after 7 calendar days from the date on which the request was sent by post.

The response of the interested party shall be submitted to the investigating authority not later than 30 calendar days from the date of the receipt of the request.

The response is considered as received by the investigating authority if it is received by the investigating authority not later than 7 calendar days from the date of expiry of the period specified in subparagraph 5 of this paragraph.

The information submitted by the interested party after the expiry of the specified period may be disregarded by the investigating authority.

Upon reasoned written request of the interested party, the period for submitting the response may be extended by the investigating authority.

14. In cases where the interested party refuses to provide necessary information to the investigating authority, does not provide such information within the established period of time or provides inaccurate information, thereby significantly impeding the investigation, such interested party shall be considered as non-cooperating, and preliminary or final determinations may be made by the investigating authority based on the facts available to it.

Failure to provide the requested information in electronic form or in electronic format specified in the request of the investigating authority shall not be regarded by the investigating authority as non-cooperation, provided that the interested party in question is able to prove that the full implementation of criteria for the provision of information specified in the request of the investigating authority is not possible or is associated with significant material costs.

In cases where the investigating authority does not take into account the information provided by the interested party for reasons other than those indicated in subparagraph one of this paragraph, the party in question shall be informed of the reasons and grounds for taking such decision and shall be given an opportunity to comment thereon within a period which is established by the investigating authority.

If during the preparation of a preliminary or final determination of the investigating authority, including the determination of normal value (in the case of an anti-dumping investigation), the provisions of the first subparagraph of this paragraph are applied and information is used (including the information provided by the applicant), the information to be used in the preparation of such determinations shall be verified using the available information obtained from third sources or from the interested parties, provided that such verification neither impedes the investigation nor prevent its timely conclusion.

15. As soon as possible after the date of taking the decision to initiate an anti-dumping or countervailing duty investigation, the investigating authority shall send to an authorized body of the exporting third country and exporters known to it copies of the application or its non-confidential version (if the application contains confidential information), as well as provide such copies to other interested parties upon their request.

In cases where the number of known exporters is large, a copy of the application or its non-confidential version shall be sent only to an authorized body of the exporting third country.

The investigating authority shall provide copies of the application or its non-confidential version to the participants in a safeguard investigation upon their request, if the application contains confidential information (in case there are confidential information in the application).

During the investigation, with due regard to the requirement to protect confidential information, the investigating authority shall provide to the participants in the investigation at their request an opportunity to see the information provided in writing by any interested party as the evidence relevant to the subject of investigation.

During the investigation, the investigating authority shall provide to the participants in the investigation an opportunity to see other information relevant to the investigation that is used in the investigation and is not confidential information.

16. At the request of the interested parties, the investigating authority shall hold consultations on the subject of investigation.

17. During the investigation, all interested parties shall be given an opportunity to defend their interests. To this end, the investigating authority shall provide to all interested parties at their request an opportunity to have a meeting to present their opposing views and to offer rebuttal. The provision of such an opportunity shall be provided with due regard to the requirement to preserve the confidentiality of information. It shall not be obligatory for all interested parties to attend a meeting, and the absence of any interested party shall not be prejudicial to its interests.

18. Consumers using in their production the product subject to investigation, representatives of public associations of consumers, state authorities, local government authorities as well as other persons shall have a right submit to the investigating authority information which is relevant to the investigation.

19. An investigation shall be concluded within:

1) 9 months from the date of the initiation of the investigation based on the application to apply a safeguard measure (this period may be extended by the investigating authority, but not more than for 3 months);

2) 12 months from the date of the initiation of the investigation based on the application to apply an anti-dumping or countervailing measure (this period may be extended by the investigating authority, but not more than for 6 months).

20. An investigation shall not hinder customs procedures in respect of the product subject to investigation.

21. The authorized body in order to ensure the investigation and application of safeguard, anti-dumping and countervailing measures can request information including confidential information from the government authorities of the Republic of Kazakhstan and the stakeholders.

22. Government authorities of the Republic of Kazakhstan within its competence provide the necessary information for the purposes of the investigation and the application of safeguard, antidumping and countervailing measures, including confidential information:

1) at the request of the authorized body;

2) at the request of the investigating authority through the authorized body.

In case of the failure of the requested by authorized body and (or) the investigating authority information, the government authorities of the Republic of Kazakhstan inform the authorized body indicating the grounds.

23. The authorized body provides the collection, processing and transmission of data, including those containing confidential information requested by the investigating authority.

24. Provide evidence and information to the investigating authority as well as communication with the investigating authority carried out in Russian, and the original documents, which are in a foreign language must be accompanied by a translation into Russian (with notarized authenticity of the translation).

25. The representatives of the authorized body shall participate in meetings, consultations and public hearings held during the investigation by the investigating authority.

26. The date of the conclusion of an investigation shall be the date on which the Commission considers the report pursuant to the investigation and the Commission's draft act, which is specified in Article 5 of this Law.

In cases where the investigating authority makes a final determination that there are no grounds for the application, review or withdrawal of a safeguard, anti-dumping or countervailing measures, the date of the conclusion of the investigation shall be the date of publication of the relevant notice on the Internet source of the Eurasian Economic Union.

In case of the imposition of a provisional safeguard duty, a provisional anti-dumping duty or a provisional countervailing duty, the investigation shall be concluded prior to the date of the expiry of the respective provisional duty.

27. In case if the investigating authority during the investigation establishes the lack of existence of increased imports into the customs territory of the Eurasian Economic Union and resulting serious injury to domestic industry of the Member States or threatens to cause such injury, as well as dumped or subsidized imports into the customs territory of the Eurasian Economic Union and the resulting material injury to domestic industry of the Member States or threatens to cause such injury, or substantial slowdown in creation of domestic industry of the Member States, the investigation is terminated without the introduction of safeguard, anti-dumping or countervailing measures.

Article 34. Special procedures for anti-dumping investigation

1. An anti-dumping investigation shall be terminated without the imposition of an anti-dumping measure if the investigating authority determines that the margin of dumping is less than de minimis, or that the volume of dumped imports, actual or potential, or the material injury caused by such imports, or threat thereof, or material retardation of the establishment of a domestic industry of the Member States, is negligible.

The margin of dumping shall be considered to be de minimis if this margin does not exceed 2 percent.

2. The volume of dumped imports from a particular exporting third country shall be negligible if it accounts for less than 3 percent of total imports of the product subject to investigation into the customs territory of the Eurasian Economic Union, provided that exporting third countries which individually account for less than 3 percent of the total imports of the product subject to investigation into the customs territory of the Eurasian Economic Union collectively account for not more than 7 percent of total imports of the like product subject to investigation into the customs territory of the Eurasian Economic Union.

3. The investigating authority shall, before a decision pursuant an anti-dumping investigation is taken, inform the interested parties of the main conclusions made pursuant the investigation with due regard to the requirement to protect confidential information, and shall give them an opportunity to make comments.

The period for the interested parties to provide their comments shall be established by the investigating authority and shall not be less than 15 calendar days.

Article 35. Special procedures for countervailing duty investigation

1. After an application is accepted for consideration and before a decision to initiate an investigation is taken, the investigating authority shall propose to an authorized body of the exporting third country, from which the product in respect of which it is proposed to impose a countervailing measure is exported, to conduct consultations with the purpose of clarifying the situation as to the existence, amount and consequences of granting an alleged specific subsidy and arriving at a mutually acceptable solution.

Such consultations may also continue in the course of the investigation.

2. The conduct of consultations specified in paragraph 1 of this Article does not prevent taking a decision to initiate an investigation and to apply a countervailing measure.

3. A countervailing duty investigation shall be terminated without the imposition of a countervailing measure if the investigating authority determines that the amount of a specific subsidy of an exporting third country is de minimis, or the volume of subsidized imports, actual or potential, or the material injury to a domestic industry of Member States caused by such imports, or threat thereof, or material retardation of the establishment of a domestic industry of the Member States, is negligible.

4. The amount of a specific subsidy shall be considered to be de minimis if it is less than 1 percent of the value of the product subject to investigation.

The volume of subsidized imports shall normally be regarded as negligible if it accounts for less than 1 percent of total imports of the like product into the customs territory of the Eurasian Economic Union, provided that exporting third countries which individually account for less than 1 percent of the total imports of the like product into the customs territory of the Eurasian Economic Union collectively account for not more than 3 percent of total imports of the like product into the customs territory of the Eurasian Economic Union.

5. A countervailing duty investigation in respect of an imported subsidized product originating in a developing or least developed country which is the beneficiary of the system of tariff preferences of the Eurasian Economic Union shall be terminated in cases where the investigating authority determines that the overall level of specific subsidies of the exporting third country granted upon this product does not exceed 2 percent of its value calculated on a per unit basis, or the volume of the imports of this product from such a third country represents less than 4 percent of the total imports of this product into the customs territory of the Eurasian Economic Union, provided that imports of this product into the customs territory of the Union from developing and least developed countries whose individual shares account for less than 4 percent of the total imports of this product into the customs territory of the Eurasian Economic Union collectively account for not more than 9 percent of the total imports of this product into the customs territory of the Eurasian Economic Union.

6. The investigating authority shall, before a decision, pursuant a countervailing duty investigation, is taken, inform all interested parties of the main conclusions made in the course of the investigation with due regard to the requirement to protect confidential information and shall give them an opportunity to make comments.

The period for the interested parties to provide their comments shall be established by the investigating authority and shall not be less than 15 calendar days.

Article 36. Definition of domestic industry of Member States in case of dumped or subsidized imports

1. For the purposes of an anti-dumping or countervailing duty investigation, the term "domestic industry of the Member States" shall be interpreted within the meaning of subparagraph 17 Article 1 of this Law, except for the cases specified in paragraphs 2 and 3 of this Article.

2. In cases where the producers of the like product in the Member States are themselves importers of the allegedly dumped or subsidized product, or are related to the exporters or

importers of the allegedly dumped or subsidized product, the term "domestic industry of the Member States" may be interpreted as referring to the rest of the producers of the like product in the Member States.

The producers of the like product in the Member States shall be deemed to be related to the exporters or importers of the allegedly dumped or subsidized product if:

- 1) particular producers of the like product in the Member States directly or indirectly control the exporters or importers of the product subject to investigation;
- 2) particular exporters or importers of the product subject to investigation directly or indirectly control the producers of the like product in the Member States;
- 3) particular producers of the like product in the Member States and the exporters or importers of the product subject to investigation are directly or indirectly controlled by a third person;
- 4) particular producers of the like product in the Member States and the foreign producers, exporters or importers of the product subject to investigation directly or indirectly control a third person, provided that there are grounds for the investigating authority to believe that such relationship causes such producers to behave differently from non-related parties.

3. In exceptional circumstances, for the purposes of defining the domestic industry of the Member States, the territory of these States may be divided into two or more territorially isolated competitive markets and the producers in the Member States within one of the indicated markets may be regarded as a separate domestic industry of the Member States if such producers sell in such market not less than 80 percent of their production of the like product for consumption or processing, and the demand for the like product in such market is not to a substantial degree supplied by producers of such product located elsewhere in the territory of the Member States.

In such circumstances, material injury to a domestic industry of the Member States, threat thereof or material retardation of the establishment of a domestic industry of the Member States caused by dumped or subsidized imports may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of sales of dumped or subsidized imports into one of the indicated competitive markets and the dumped or subsidized imports are causing injury to all or almost all producers of the like product in the Member States within one such market.

4. In cases where a domestic industry of the Member States is interpreted within the meaning of paragraph 3 of this Article and, pursuant to an investigation, a decision to apply an anti-dumping or countervailing measure is taken, such measure may be applied to all imports of the product into the customs territory of the Eurasian Economic Union.

In the abovementioned case an anti-dumping or countervailing duty shall be imposed only after the investigating authority has given the exporters an opportunity to cease exporting such product to the area concerned at dumped prices (in the case of dumped imports) or at subsidized prices (in the case of subsidized imports), or to offer respective undertakings in relation to the conditions of exporting into the customs territory of the Eurasian Economic Union, provided that such opportunity has not been used by the exporters.

Article 37. Public hearings

1. On the basis of the petition submitted by any of the participants in the investigation in writing and within the term established in accordance with this Law, the investigating authority provides the conduction of the public hearings.

2. The investigating authority shall send a notice to the participants in the investigation specifying the time and location of public hearings, as well as a list of questions to be discussed in the course of public hearings.

The date of public hearings shall be appointed no sooner than 15 calendar days from the date of sending the respective notice.

3. Participants in the investigation or their representatives as well as persons engaged by them for the purposes of providing information relating to the investigation shall have a right to participate in public hearings.

In the course of public hearings, the participants in the investigation may express their opinion and provide evidence relating to the investigation. The representative of the investigating authority shall have a right to ask the participants in public hearings questions relating to the essence of the facts submitted by them. The participants in the investigation shall also have a right to ask each other questions and shall give answers. The participants in public hearings shall not be required to disclose information treated as confidential.

4. Oral information, which has been provided in the course of public hearings shall be taken into account in the course of the investigation if within 15 calendar days from the date of the public hearings the participants in the investigation have provided it in writing to the investigating authority.

Article 38. Collection of information in the course of investigation

1. After the decision to initiate an anti-dumping or countervailing duty investigation is taken, the investigating authority shall send to known exporters and/or producers of the product subject to investigation a questionnaire, which shall be completed by them.

A questionnaire shall also be sent to producers of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing duty investigation) in the Member States.

If necessary, a questionnaire may also be sent to importers and consumers of the product subject to investigation.

2. Parties specified in paragraph 1 of this Article to whom a questionnaire has been sent shall submit their responses to the investigating authority within 30 calendar days from the date of the receipt of the questionnaire.

Upon reasoned written request of the parties specified in paragraph 1 of this Article the period in question may be extended by the investigating authority for no more than 14 calendar days.

3. A questionnaire shall be deemed to have been received by the exporter and/or producer of the product from the date of its transmission directly to the representative of the exporter and/or producer or after 7 calendar days from the date on which it was sent by post.

Responses to a questionnaire shall be deemed to have been received by the investigating authority if they have been submitted to the investigating authority in a confidential and a non-confidential versions not later than 7 calendar days from the date of the expiry of the 30 day period specified in paragraph 2 of this Article or from the date of the expiry of the extension period.

4. The investigating authority shall satisfy itself as to the accuracy and adequacy of the information submitted by interested parties during the course of an investigation.

In order to verify information provided during the course of an investigation or to obtain further information relating to the investigation being carried out, the investigating authority may, as required, carry out verification:

1) in the territory of the third country, provided it obtains the agreement of respective foreign exporters and/or producers of the product subject to investigation and the third country which has been officially notified of the forthcoming verification does not object to it;

2) in the territory of the Member State, provided it obtains the agreement of respective importers of the product subject to investigation and/or producers of the like or directly competitive product.

A verification shall be carried out after the responses to the questionnaires sent in accordance with paragraph 1 of this Article have been received unless the foreign producer or exporter voluntarily agrees to verification to be carried out before such responses have been sent and the respective third country does not object to it.

After the agreement has been obtained from the respective participants in the investigation and before the start of verification, these participants shall be sent a list of documents and materials which shall be submitted to the officers directed to carry out verification. The investigating authority shall notify the third country of the addresses and names of the foreign exporters or producers to be verified as well as the dates of such verification.

Other documents and materials necessary to verify the information submitted in the responses to a questionnaire may also be requested in the course of verification.

In cases where the investigating authority intends to include experts who are not officers of this authority in the investigating team for the purposes of carrying out verification, the participants in the investigation subject to verification activities shall be notified in advance of such decision of the investigating authority. Participation of such experts in verification should be permitted only if there is a possibility to apply sanctions for the breach by them of confidentiality of information obtained in connection with verification.

5. In order to verify information submitted in the course of an investigation or to obtain further information relating to the investigation being carried out, the investigating authority shall have a right to direct its representatives to a location of interested parties, collect information, hold consultations and negotiations with interested parties, familiarize itself with samples of the product and take other actions necessary for carrying out an investigation.

Article 39. Confidential information

1. The government authorities of the Republic of Kazakhstan provide confidential information to the authorized body in accordance with the legislation of the Republic of Kazakhstan.

2. The information submitted by an interested party to the investigating authority shall be treated as confidential if this party provides reasoning which indicates, *inter alia*, that disclosure of such information would be of a competitive advantage to a third party or would have adverse effects upon a person who has submitted such information or upon a person from whom such information has been received.

Justifications must be given in a written form.

3. Interested parties submitting confidential information shall be required to provide a non-confidential version of such information.

A non-confidential version shall be in sufficient detail to permit an understanding of the substance of the information submitted in confidence.

In exceptional cases, when an interested party is not able to submit a non-confidential version of confidential information, it must provide a detailed reasoned statement as to why the submission of a non-confidential version is impossible.

4. The authorized body cannot send confidential information to third parties, except the investigating authority.

Confidential information provided by the interested parties, may not be disclosed without their written permission.

Confidential information cannot be used by officials of the authorized body for personal purposes.

Article 40. Interested parties

1. For the purposes of an investigation, interested parties shall be:

1) a producer of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;

2) an association of producers a majority of the members of which are producers of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;

3) an association of producers the members of which account for more than 25 percent of the total volume of production of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;

4) an exporter, foreign producer or the importer of the product subject to investigation, and an association of foreign producers, exporters or importers of products a significant part of the members of which are producers, exporters or importers of the product in question from the exporting third country or the country of origin of the product;

5) an authorized body of the exporting third country or of the country of origin of the product;

6) consumers of the product subject to investigation, if they use such product in production or associations of such consumers in the Member States;

7) public associations of consumers (if the product is mainly consumed by natural persons).

2. Interested parties shall act in an investigation on their own or through their duly authorized representatives, who have formalized credentials in accordance with legislation of the Republic of Kazakhstan.

If an interested party acts in an investigation through an authorized representative, the investigating authority shall provide all information on the subject matter of the investigation to the interested party only through this representative.

Article 41. Notice of decisions taken in connection with investigation

1. The investigating authority shall publish on the Internet source of the Eurasian Economic Union the following notices of decisions taken in connection with an investigation:

1) of initiation of an investigation;

2) of imposition of a provisional safeguard, a provisional anti-dumping or a provisional countervailing duty;

3) of possible application of an anti-dumping duty in accordance with Article 19 of this Law or the possible application of a countervailing duty in accordance with Article 29 of this Law;

4) of conclusion of a safeguard investigation;

5) of conclusion of an investigation pursuant to which the investigating authority has concluded that there are grounds for the imposition of an anti-dumping or countervailing measure or that acceptance of respective undertakings is practical;

6) of conclusion or suspension of an investigation in connection with the acceptance of respective undertakings;

7) of termination of an investigation pursuant to which the investigating authority concluded that there are no grounds for the imposition of a safeguard, anti-dumping or countervailing measure;

8) of other decisions taken in connection with an investigation.

Such notices shall also be sent to the authorized bodies of the Republic of Kazakhstan and business entities registered in the territory of the Republic of Kazakhstan, whose interests may be affected by the judgment indicated in the notice.

2. The notice of the initiation of an investigation shall be published on the Internet source of Eurasian Economic Union not later than 10 business days from the date on which the investigating authority takes the decision to initiate an investigation and shall include:

1) a complete description of the product subject to investigation;

2) the name of the exporting third country;

3) a summary of the evidence indicating the existence of increased imports into the customs territory of the Eurasian Economic Union and the existence of serious injury or threat thereof to a domestic industry of the Member States (in cases where the decision to initiate a safeguard investigation is taken);

4) a summary of the evidence indicating the existence of dumped or subsidized imports and the existence of material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States (in cases where the decision to initiate an anti-dumping or countervailing investigation is taken);

5) the address to which interested parties may send their opinion or information relevant to an investigation;

6) the period of 25 calendar days within which the investigating authority shall accept from interested parties statements of intent to participate in an investigation;

7) the period of 45 calendar days within which the investigating authority shall accept from interested parties requests for public hearings;

8) the period of 60 calendar days within which the investigating authority shall accept from interested parties comments and information relevant to an investigation in writing.

3. Notice of the imposition of a provisional safeguard, a provisional anti-dumping or a provisional countervailing duty shall be published not later than 3 business days from the date on which such decision is taken by the Commission and shall also contain the following information:

1) the name of the exporter of the product subject to investigation or the name of the exporting third country (if it is impracticable to provide the name of the exporter);

2) a description of the product subject to investigation which is sufficient for the purposes of customs control;

3) the grounds for the affirmative determination of dumped imports with the indication of the margin of dumping and a description of the grounds for the methodology used in the calculation and comparison of the normal value of the product and its export price (when a provisional anti-dumping duty is imposed);

4) the grounds for the affirmative determination of subsidized imports with a description of the existence of a subsidy and an indication of the calculated amount of subsidization per unit (when a provisional countervailing duty is imposed);

5) the grounds for the determination of serious or material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States;

6) the grounds for the establishment of a causal relationship between the increased imports, the dumped and subsidized imports, and serious or material injury or threat thereof to a domestic industry of the Member States or material retardation of the establishment of a domestic industry of the Member States, respectively;

7) the grounds for the affirmative determination of increased imports (when a provisional safeguard duty is imposed).

4. A notice of the possible application of an anti-dumping duty in accordance with Article 19 of this Law or a notice of the possible application of a countervailing duty in accordance with Article 29 of this Law shall contain:

1) a description of the product subject to investigation which is sufficient for the purposes of customs control;

2) the name of the exporter of the product subject to investigation or the name of the exporting third country (if it is impracticable to provide the name of the exporter);

3) a summary of the evidence indicating that the conditions specified in Articles 19 and 29 of this Law are fulfilled.

5. A notice of the completion of a safeguard investigation shall be published by the investigating authority not later than 3 business days from the date of the completion of the investigation and shall contain the main conclusions made by the investigating authority based on the information available to it.

6. The notice of the conclusion of an investigation pursuant to which the investigating authority has concluded that there are grounds for the imposition of an anti-dumping or countervailing measure or that the acceptance of respective undertakings is practical shall be published not later than 3 business days from the date of the conclusion of the investigation and shall include:

1) an explanation for the final determination on the results of the investigation made by the investigating authority;

2) a reference to the facts based on which such determination was made;

3) information specified in paragraph 3 of this Article;

4) an indication of the reasons for the acceptance or rejection of arguments and requests of the exporters and importers of the product subject to investigation;

5) an indication of the reasons for taking decisions in accordance with paragraphs 7-11 Article 13 of this Law.

7. A notice of the termination or suspension of an investigation in connection with the acceptance of respective undertakings shall be published not later than 3 business days from the date of the termination or suspension of an investigation and shall contain a non-confidential version of these undertakings.

8. A notice of the termination of an investigation pursuant to which the investigating authority has concluded that there are no grounds for the imposition of a safeguard, anti-dumping or countervailing measure shall be published not later than 3 business days from the date of the termination of the investigation and shall contain:

1) an explanation for the final determination pursuant to the investigation made by the investigating authority;

2) a reference to the facts based on which the determination specified in subparagraph one of this paragraph was made.

9. A notice of the termination of the investigation pursuant to which the investigating authority takes the decision not to apply a measure in accordance with Article 42 of this Law shall be published not later than 3 business days from the date on which such decision is taken and shall include an explanation of the reasons why the Commission has taken the decision not to apply a safeguard, anti-dumping or countervailing measure with the indication of facts and conclusions on the basis of which such decision has been taken.

10. The investigating authority shall ensure that all notifications provided for by the Marrakesh Agreement Establishing the World Trade Organization dated 15 April 1994 with regard to investigations and applied measures are sent in accordance with the established procedure to the competent authorities of the World Trade Organization.

11. The provisions of this Article shall apply mutatis mutandis to the notices of the initiation and the conclusion of reviews.

Article 42. Non-application of the safeguard, antidumping and countervailing measures

1. The Commission, pursuant to an investigation, may take a decision not to apply a safeguard, anti-dumping or countervailing measure even if the application of such measure meets the criteria established by this Law.

Such decision may be taken by the Commission if the investigating authority, based on the analysis of all information provided by interested parties, has made a conclusion that the application of such measure may impair the interests of the Member States. Such decision may be reviewed in case of changes in the reasons, which were the basis for taking such decision.

Prior to the decision of Commission on non-application of safeguard, antidumping and countervailing measures, offer of inappropriate use of corresponding measure authorized body shall coordinate with the interested government authorities of the Republic of Kazakhstan.

2. The conclusion referred to in paragraph 1 of this Article shall be based on the results of cumulative assessment of the interests of a domestic industry of the Member States, consumers of the product subject to investigation, if they use such product in production and associations of such consumers in the Member States, public associations of consumers (if the product is mainly consumed by natural persons) and importers of the product in question. Such a conclusion may only be made after the mentioned parties have been given an opportunity to comment on the matter in question in accordance with paragraph 3 of this Article.

In making such a conclusion, particular importance shall be attached to the elimination of distorting effects of increased, dumped or subsidized imports on the ordinary course of trade and competition in the relevant market for goods of the Member States and the situation in the industry of the Member States.

3. For the purposes of the application of the provisions of paragraph 1 of this Article, the producers of the like or directly competitive product (in the case of a special safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States, their associations, importers and associations of the importers of the product subject to investigation, consumers of the product subject to investigation (if they use such product in production), and associations of such consumers in the Member States, public associations of consumers (if such product is mainly consumed by natural persons) shall have the right, within the period established in the notice which is published in accordance with paragraph 2 Article 41 of this Law, to provide their comments and information on the matter. Such comments and information or their non-confidential version, as appropriate, shall be made available to other interested parties referred to in this paragraph, which shall have a right to provide their comments in response.

The information provided in accordance with this paragraph shall be taken into consideration regardless of its source, if there are objective facts supporting its accuracy.

Chapter 6. Final provisions

Article 43. Peculiarities of appeal of decisions on the application of safeguard, antidumping and countervailing measures in court

The procedure and particularities for the appeal of decisions of the Commission and/or action (inaction) of the Commission relating to the application of safeguard, anti-dumping and countervailing measures shall be determined by the Statute of the Court of the Eurasian Economic Union and by the Regulation of the Court of the Eurasian Economic Union.

Article 44. Amenability for violation of the Law of the Republic of Kazakhstan on application of Safeguard, Antidumping and Countervailing Measures with Regard to the Third Countries

Breach of the Law of the Republic of Kazakhstan on application of Safeguard, Antidumping and Countervailing Measures with Regard to the Third Countries involves responsibility established by legislations of the Republic of Kazakhstan.

Article 45. The order of enactment of this Law

1. This law comes into force upon expiration of 30 calendar days after its first official publication.

2. The following are repealed:

1) The law of the Republic of Kazakhstan dated 28 December 1998 "On measures to protect the domestic market for imported goods" (Bulletin of the Parliament of the Republic of Kazakhstan, 1998, number 24, p. 446; 1999, number 21, p. 763; 2005 ., number 11, p. 40, 2006, No. 3, p. 22, number 15, p. 95, 2010, number 5, p. 23, number 15, p. 71, 2011, number 2, p. 26, 2013, number 15, p. 81, 2014, number 21, p. 122, number 22, p. 131);

2) Law of the Republic of Kazakhstan dated 13 July 1999 "On the antidumping measures" (Bulletin of the Parliament of the Republic of Kazakhstan, 1999, number 19, p. 654; 2006, number 1, p. 3; number 3, p. 22; 2010, number 15, p. 71, 2011, number 11, p. 102; 2013, number 15, p. 81, 2014, number 21, p. 122);

3) The law of the Republic of Kazakhstan dated 16 July 1999 "On Subsidies and Countervailing Measures" (Bulletin of the Parliament of the Republic of Kazakhstan, 1999, number 20, p. 732; 2006, number 1, p. 3, 2010, number 15, p. 71, 2011, number 11, p. 102; 2013, number 14, p. 75, number 15, p. 81, 2014, number 21, p. 122).
