

Евразийское экономическое сообщество

03.09.2009

AGREEMENT AGREEMENT on application of special Safeguard, anti-Dumping and countervailing measures to the Third Countries

AGREEMENT

on application of special Safeguard, anti-Dumping and countervailing measures to the Third Countries

The Government of the Republic of Belarus, the Government of the Republic of Kazakhstan and the Government of the Russian Federation, hereinafter referred to as the Parties,

have agreed as follows:

I. GENERAL PROVISIONS

Article 1

Scope of Application

1. This Agreement shall govern the relations arising out of or in connection with import of products originating from the customs territories of third countries and destined for the customs territories of the Parties.

2. This Agreement shall not govern relations arising out of or in connection with rendering services, accomplishment of work, cession or granting exclusive intellectual property rights or rights to use intellectual property, as well as investment activities and currency control.

Article 2

Basic Terms and Definitions

For the purposes of this Agreement, the following terms and definitions apply:

“a like product” means a product which is fully identical to the product which is or may be under investigation (reinvestigation), or, in the absence of such a product, other product which has the features similar to the features of the product which is or may be under investigation (reinvestigation);

“anti-dumping measure” means a measure on counteracting the import of dumped products which shall be applied upon the decision of a competent body by imposing an antidumping duty as well as a provisional antidumping duty or approving of the pricing undertakings accepted by the exporter;

“anti-dumping duty” means a duty which is applied upon the imposition of antidumping measures and is levied upon by the customs bodies of the Parties irrespective of the collection of the import customs duty;

“margin of dumping” means a percentage ratio of the normal value of products less export cost of such

products to its export cost, or a difference between the normal value of the product and its export cost in absolute terms;

“import quota” means restriction on the import of products to the customs territories of the Parties in terms of quantity and (or) cost;

“countervailing measure” means a measure to compensate for effects of a specific subsidy of an exporting country on the domestic industry of the Parties that shall be applied by the decision of the competent body by imposing a countervailing duty, including a provisional countervailing duty, or by the approval of voluntary undertakings taken by the authorised body of a subsidising foreign country or by the exporter;

“countervailing duty” means a duty to be imposed upon the imposition of countervailing measures and to be collected by the customs bodies of the Parties irrespective of the collection of the import customs duty;

“a competent body” means a Customs Union Commission established by a Customs Union Commission Treaty signed on October 6, 2007;

“material injury to a domestic industry the Parties” positive evidence of the impairment to a domestic industry of the Parties manifested, in particular, by a decline of output and sales of like products in the Parties, and the volume of its realization in the market of the Parties, reduction of production profitability of such a product, as well as adverse effects on inventories, employment, wages and the level of investments to the affected domestic industry of the Parties;

“*de minimis* margin of dumping” means a margin of dumping amounting to 2%;

“directly competitive product” means a product comparable to the product which is or may be under investigation (reinvestigation) in regard to its purpose, application, qualitative and technical characteristics, as well as other basic features to such an extent that a customer substitutes or is ready to substitute it in the process of consumption of the product which is or may be under investigation (reinvestigation);

“ordinary course of trade” means purchase/sale of like products in the market of the exporting country at a price that is not lower than the weighted average production costs which shall be determined based on the weighted average of the production, trade, administrative and general expenses;

“domestic industry of the Parties” means all producers of a like product (for the purposes of anti-dumping and countervailing investigation) or a like product or directly competitive product (for the purposes of special safeguard investigation) in the Parties, or those of them whose share constitutes the major amount, but not less than 25 per cent, in the general production volume in the Parties of like products or the like or directly competitive product;

“investigation” means a special safeguard, anti-dumping or counter-vailing investigation;

“connected persons” mean persons who meet one or more of the following criteria:

either is an officer or a head of the entity founded with participation of the other;

they are business partners, which means that they are bound to a contract, operate to make a profit and jointly bear all expenditures and losses arising out of or in connection with the joint venture;

they are employers and employees;

one, directly or indirectly, holds, exercises control or is a nominee of 5% or more voting shares or stakes in both entities;

one of them, directly or indirectly, controls the other;

both persons are, directly or indirectly, controlled by a third person;

together they, directly or indirectly, control a third person;

they are in marital relations, blood or in-law relations, an adopter or an adoptee, as well as a tutor and a ward;

“serious injury to a domestic industry of the Parties’ State” means substantial deterioration of the state of production, trade or finances of the domestic industry of the Parties’ States which is manifested in an overall impairment in the production of the like or the directly competitive product in the Parties, and shall be normally determined 3 calendar years directly preceding the date of investigation, on which there is statistical data available;

“special duty” means a duty applied upon imposition of a special safeguard measure and levied upon by the customs bodies of the Parties irrespective of the collection of the import customs duty;

“special safeguard measure” means a measure on restricting increased imports to the single customs territory of the Parties that shall be applied by the decision of the competent body by imposing import quotas or a special duty, including a provisional specific duty;

“subsidised imports” mean importation of a product to the single customs territory of the Parties, during the production, exportation or transportation of which a specific subsidy of an exporting country was used;

“subsidising body” means a governmental body (including the President of the Party State), or local authorities of the foreign exporting country, or an undertaking acting on behalf of the governmental body or local authorities, or authorised by respective governmental body (including the President of the Party State) or local authorities in accordance with the legal instrument or proceeding from factual situation;

“threat of causing material injury to a domestic industry of the Parties” means evidenced inevitability of causing a material injury to the domestic industry of the Parties;

“threat of causing serious injury to a domestic industry of the Parties” means evidenced inevitability of causing a serious injury to the domestic industry of the Parties;

“export price” means a price paid or to be paid by the customers, that are not connected persons, at which the product is imported to the single customs territory of the Parties;

“exporting country” means a foreign country (or a union of foreign countries) which is not a party hereto, out of which a product is imported to the single customs territory of the Parties, which was, is or may be under investigation, except for the transit (paragraph 5 Article 11 hereof);

“third countries” means countries which are not the parties to on Treaty the Single customs territory and customs union of October 6, 2007.

Article 3

Investigations

1. The imposition of safeguard, anti-dumping and countervailing measures shall be preceded by an investigation to be conducted in observance of the provisions hereof.

2. The decision on the results of investigation on application, review, termination or non-application of a special safeguard, anti-dumping or countervailing measure shall be made by the competent body.

3. Evidence, data and correspondence pertaining to the investigation shall be submitted to the competent body in Russian, and originals of the documents drafted in a foreign language shall be accompanied by a certified translation into Russian.

II. SPECIAL SAFEGUARD MEASURES

Article 4

General Principles of Application of Special Safeguard Measures

1. A special safeguard measure may be applied to a product only if, based on the results of investigation carried out by the competent body, it was established that imports of the product to the single customs territory of the Parties is in such increased quantities (absolute or relative to the domestic production of the like or the immediate competitive product in the Parties) and on such terms as to cause or threaten to cause serious injury to the domestic industry of the Parties' State.

2. A special safeguard measure shall be applied to a product imported to the single customs territory of the Parties' State from an exporting country irrespective of the country of origin of such a product, except for a product originating from a developing country which enjoys a national system of preferences of the Parties' State; if the import share of such products imported from such countries does not exceed 3% of the total volume of import of such products to the single customs territory of the Parties' State, provided that accumulated share of such products imported from developing countries, the share of these constituting not more than 3% of the total volume of import of such products to the single customs territory of the Parties' State, does not exceed 9% of the total volume of import of such products to the single customs territory of the Parties' State.

Article 5

Determination of Serious Injury to a Domestic Industry

of the Parties' State or Threat of Such Injury

from Increased Imports

1. For the purpose of determining the existence of serious injury or threat thereof to the domestic industry of the Parties' State from increased imports of the product to the single customs territory of the Parties, the competent body shall assess, during the investigation, actual factors which may be expressed in quantitative terms and affect economic situation in the domestic industry of the Parties' State, including:

1) the rate and amount of increase in imports of the product subject to investigation to the single customs territory of the Parties in absolute or relative terms to the total volume of production or consumption of a similar or directly competitive product in the Parties' State;

2) the share of the imported product subject to investigation in the total volume of sales of the product or a similar or directly competitive product in the market of the Parties' State;

3) the level of prices for the imported product subject to investigation as compared to the prices for a similar or directly competitive product produced in the Parties' State;

4) changes in the volume of sales of a similar or directly competitive product produced in the Parties' State in the domestic market of the Parties' State;

5) changes in the volume of production of a similar or directly competitive product, productivity, capacity utilisation, profits and losses, as well as employment rate in the domestic industry of the Parties.

2. Serious injury or threat of such injury to the domestic industry of the Parties' State as a result of increased import of a product shall be established based on the results of the analysis of all evidence and data relevant to the case and available to the competent body.

3. In addition to increased imports, the competent body shall analyze other known factors which simultaneously cause serious injury or threat of such injury to the domestic industry of the Parties' State. The competent body shall not refer the said injury to serious injury to the domestic industry of the Parties' State caused by increased imports to the single customs territory of the Parties' State.

Article 6

Imposition of Provisional Special Duties

1. Given critical situation in the domestic industry of the Parties' State, provided it was determined prior to conclusion of investigation that a delay in the application of special safeguard measures would cause serious injury to the domestic industry of the Parties' State which would be difficult to restore thereafter, the competent body, based on the preliminary determination that there is evidence of the causal relationship between the increased imports to the single customs territory of the Parties' State and serious injury to the domestic industry of the Parties' State, may decide on the application of special safeguard measures by levying provisional special duty for a period not exceeding 200 days provided a simultaneous investigation continues.

2. The competent body shall notify in writing an authorised body of the exporting country, as well as any other interested persons know to it, of the possible imposition of a provisional special duty.

3. As and when required by the authorised body of the exporting country about consultations on the imposition of a provisional special duty, such consultations shall be initiated after the competent body decides on the imposition of such duty.

4. In cases where, based on the investigation results, it was determined that the grounds for the imposition of a special safeguard measure do not exist, the amounts of the provisional special duty shall be refunded to the payer under the procedure established by the customs laws of the Parties of customs charges, customs bodies of which collected the provisional special duty.

5. In cases where, based on the investigation results, it was determined that a specific duty lower than a rate of the provisional specific duty is deemed advisable, a difference between the rate of the provisional special duty and the rate of the definitive special duty shall be refunded to the payer under the procedures established by the customs laws of the Parties' State of customs charges, whose customs bodies collected the provisional special duty, and the remainder of the sums of the provisional special duty shall be transferred to the budget under a separate agreement between the Contracting Parties, which regulates crediting and allocation of customs duties, other duties, taxes and levies of equal effect.

7. If the investigation results in the decision on application of the special safeguard measure, the duration

of the provisional special duty shall be counted in the total period of the special safeguard measure, and the amounts of the provisional special duty shall be transmitted to the budget in accordance with the separate agreement between the Contracting Parties, which regulates crediting and allocation of customs duties, other duties, taxes and levies of equal effect.

Article 7

Application of Special Safeguard Measures

1. A special safeguard measure shall be applied as decided by the competent as long as and to the extent necessary to eliminate serious injury or threat of such injury to the domestic industry of the Parties' State, as well as to facilitate the process of adaptation of the domestic industry of the Parties to the changing economic conditions.

2. If a special safeguard measure is applied through the establishment of an import quota, the import quota should not be lower than the annual average level (in relation to quantity or value) of the volume of imports of the product under investigation for 3 years preceding the date of submitting an application for investigation, on which there are statistical data available, except for cases when it is required to establish lower import quota to eliminate serious injury or a threat of such injury to the domestic industry of the Parties' State.

3. In cases where an import quota is allocated among foreign exporting countries interested in exporting the product under investigation to the single customs territory of the Parties, a suggestion may be made to hold consultations on the issue of allocating the import quota among such countries.

4. In cases where the holding of consultations on the issue of allocating the import quota is not reasonably practicable or where in the course of holding such consultations no agreement is reached on the allocation as above, the import quota shall be allocated among foreign countries interested in exporting the product under investigation to the single customs territory of the Parties' State in the proportion set when the product in question was supplied by the said foreign exporting countries for 3 years preceding the date of submitting an application for investigation based on the total quantity or value of imports of the product.

5. In cases where imports from certain foreign exporting countries have increased in disproportionate percentage in relation to the total increase of imports of the product under investigation over 3 years preceding the date of submitting an application for investigation, on which there are statistical data available, the competent body may allocate the import quota among such foreign exporting countries with due regard to absolute and relative figures of the increased imports of the product from the referenced foreign exporting countries to the single customs territory of the Parties' State.

6. A product in whose respect it was decided to apply an import quota as a special safeguard measure shall be imported to the single customs territory of the Parties' State according to a licence to be issued as set forth by applicable laws on applying a quantitative restriction on imports.

7. The competent body may impose a special duty on the agriculture products without conducting investigation only for a period until the end of the calendar year in which the above duty was imposed to the extent not exceeding one third of the effective rate of the import customs duty on the product provided the growth of imports of the product to the single customs territory of the Parties' State does not surpass the baseline level established based on the provisions of paragraph 8 of this Article.

8. The baseline level shall be determined with account for the share of import of the product in the volume of domestic consumption in the Parties' State for the preceding 3 years on which there are statistical

data available, based on the following:

1) if such share of imports of the product is less or equal of 10 per cent, the baseline level shall be 125 per cent;

2) if such share of imports of the product surpasses 10 per cent, but is less or equal of 30 per cent, the baseline level shall be 110 per cent;

3) if such share of imports of the product surpasses 30 per cent, the baseline level shall be 105 per cent.

9. For the purpose of this Article, agriculture products shall be taken to mean products classified in the Commodity Nomenclature of the Eurasian Economic Community in groups 1–24, except for fish and fish products, under items 3301, 3501–3505, 4101–4103, 4301, 5001–5003, 5101–5103, 5201–5203, 5301, 5302 and sub-items 2905 43, 2905 44, 3809 10 and 3824 60.

Article 8

Duration and Review of Special Safeguard Measures

1. The duration of a special safeguard measure shall not exceed 4 years, except where such measure is extended as defined in paragraph 2 of this Article.

2. The duration of a special safeguard measure as specified in paragraph 1 of this Article, may be extended upon the decision of the competent body in case the results of the investigation conducted by the competent body determine that termination of that termination of the serious injury or threat of serious injury of the domestic industry of the Parties' State requires the extension of the application of the special safeguard measure and there is evidence that the corresponding domestic industry of the Parties' State takes measures facilitating its adaptation to the changing economic conditions.

3. In case the competent body decides to extend the duration of a special safeguard measure, such measure shall not be more restrictive than the special safeguard measure effective as of the date of making the decision on the extension of the duration of the special safeguard measure.

4. In cases where the duration of the special safeguard measure exceeds 1 year, the competent body shall, within the duration of the measure under consideration, gradually relax such special safeguard measure through equal periods.

In cases where the duration of the special safeguard measure exceeds 3 years, the competent body, not later than one half of the duration period of such measure, shall conduct an investigation review, which may result in preservation, mitigation or termination of the safeguard measure.

For the purpose hereof, relaxation of a special safeguard measure shall be taken to mean an increase of the import quota or decrease of the rate of the special duty.

5. The overall duration of a special safeguard measure, including that of a provisional special duty and the extended duration of the aforesaid measure, shall not exceed 8 years.

6. The special safeguard measure shall not be repeatedly applied to the product it was once applied to within a period equal to the duration of the previous safeguard measure. A period of non-application of the safeguard measure shall not be less than 2 years.

7. Notwithstanding the provisions established by paragraph 6 of this Article, a safeguard measure the

duration of which is 180 or fewer days may be applied repeatedly to the same product in case less than a year passed from the day of the application of the previous special safeguard measure and such special safeguard measure was not applied to the product more than twice during a 5-year period which preceded the day of the new special safeguard measure.

III. ANTI-DUMPING MEASURES

Article 9

General Principles of Application of Anti-Dumping Measures

1. An anti-dumping measure may be applied to any imported product which is being dumped if it was determined based on the results of an investigation carried out by the competent body that imports of such a product into the single customs territory of the Parties' State causes material injury to a domestic industry of the Parties' State or threatens to cause material injury to the domestic industry of the Parties' State, or considerably retards the establishment of such industry of the Parties' State.

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

3. For the purposes of this Section, a period of investigation shall be established as 12 month preceding the date of submitting an application for the initiation of investigation, but in any case not less than 6 months.

Article 10

Determination of the Margin of Dumping

1. The margin of dumping shall be determined by the competent body by comparison with:

- 1) weighted average normal value of the product with the weighted average export price of the product;
- 2) weighted average normal value of the product with the export prices of the product under certain transactions provided there are sensible differences in the product price depending on the customers, regions or delivery period;
- 3) normal value of the product under certain transactions with export prices of the product under certain transactions.

2. A comparison between the export price of the product with its 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. When comparing the export price of the product with its normal value, due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of delivery, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.

In cases referred to in paragraph 5 of this Article, allowances for costs, including customs duties and taxes incurred between importation and resale of the product, and for profits accruing, should also be made.

The competent body shall be entitled to request information necessary to ensure a fair comparison of the export price of the product with its normal value.

4. When there are no purchases/sales of like products in the ordinary course of trade in the domestic market of the exporting country or when, because of the low volume of sales of like products in the ordinary course of trade, or the particular market situation in the domestic market of the exporting country, it is not possible to make proper comparison between the export price of the product and the price of the like product, the export price of the product shall be compared either with the comparable price of like products imported from the exporting country to an appropriate third country, provided that this price of like products is representative, or with the cost of production of the product in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits typical of the industry.

5. In case where products are not imported directly to the single customs territory of the Parties' State from the country of origin but are exported from an intermediate country, the export price of such a product shall normally be compared with the comparable price of a like product in the market of the foreign country.

The comparison of the export price of the product may be made with a comparable price of a like product in the country of origin, if the products are merely transhipped through the foreign country from which it is exported to the single customs territory of the Parties' State, or such products are not produced in that country of export, or there is no comparable price of like products in that country of export.

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

Where a sale of foreign currency was directly linked to the export procurement involved and was made forward, the rate of exchange in the forward sale shall be used.

The competent body shall ignore fluctuations in the exchange rates and shall allow exporters at least 60 calendar days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

7. The competent body normally shall determine an individual margin of dumping in respect of every exporter and (or) producer of the product that provided information required to determine the individual margin of dumping.

8. In cases where the competent body comes to a conclusion that it is impracticable to determine the individual margin of dumping for every exporter and (or) producer of the product due to a large number of exporters, producers or importers of the product, types of products involved, or for any other reason, it may restrict the determination of the individual margin of dumping either to a reasonable number of interested parties or by using samples of the product from every exporting country which are, as far as the competent body is aware of, statistically valid on the basis of information available to the competent body at the time of selection and may be examined without any disruptions in the course of investigation.

9. In case the competent body restrict the determination pursuant to the provisions of paragraph 8 of this article, the amount of the margin of dumping calculated in respect of every foreign exporter or foreign producer who were not selected but who submitted necessary information within a period established for such submission during the investigation, shall not exceed the weighted average margin of dumping established in respect of the selected foreign exporters or foreign producers of the imported product which has been dumped.

10. If the exporter or producers of the product under investigation fail to provide the competent body with the requested information in a required form and within an established period or information provided by them cannot be verified or incorrect, the competent body may determine the margin of dumping on the basis on any other information at its disposal.

11. Besides determination of the individual margin of dumping to each known exporter and (or) producer of the product, who submitted necessary information enabling the competent body to determine the individual margin of dumping, the latter may determine a single margin of dumping for all other exporters and (or) producers of the product under investigation based on the highest margin of dumping determined during investigation.

Article 11

Determination of the Normal Value of the Product

1. The normal value of the product shall be determined by the competent body on the basis of the prices for like products when sold, during the investigation, in the domestic market of the exporting country to the customers that are not connected persons in the ordinary course of trade to be consumed in the single customs territory of the exporting country in the conditions of competition.

For the purpose of determination of the normal value, prices of like products when sold to the customers that are connected persons may be taken into consideration provided it is established that the link does not affect pricing policy of the foreign producer and (or) exporter.

2. The volume of sales of like products in the ordinary course of trade in the domestic market of the exporting country shall be considered sufficient for the determination of the normal value of the product if such sales constitute not less than 5 per cent of the total volume of exports of the product to the single customs territory of the Parties' State from the exporting country.

A lower volume of sales of like products in the ordinary course of trade shall be deemed acceptable for the determination of the normal value of the product, provided there is evidence that such volume is sufficient for a proper comparison of the export price of the product and the price of like products in the ordinary course of trade.

3. When determining normal value of the product pursuant to Paragraph 1 hereof, the price of the product when sold to the customers in the domestic market of the exporting country shall be a weighted average price for which like products was sold to the customers during the investigation, or the price of the product by its individual sale to the customers within the stated period.

4. Sales of like products in the domestic market of the exporting country or from the exporting country to the third country at prices below per unit production costs of like products including administrative, selling and general costs may not taken into consideration when determining the normal value of the product only provided the competent body establishes that such sales of like products is made during investigation at significant volumes and prices which do not provide for reimbursement of all costs over the period.

5. In case the price of the like product, which at the moment of sale is below the per unit production costs of like products including administrative, selling and general costs, exceeds weighted average per unit production costs of like products including administrative, selling and general costs during investigation, such a price shall be treated as the price which provides for reimbursement of all costs over the period.

6. Sales of like products at prices below per unit costs of like products plus administrative, selling and general costs shall be considered as made in substantial quantities when the weighted average price of like products in the transactions under consideration for the determination of the normal value of the product is below weighted average per unit costs of like products plus administrative, selling and general costs, or that the volume of sales below per unit costs and represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value of the product.

7. Per unit production costs with regard to administrative, selling and general costs shall normally be calculated on the basis of records kept by the exporter or producer of the product provided such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the like product.

8. The competent body shall consider all available evidence on the proper allocation of production, administrative, selling and general costs, including that which is made available by the exporter or producer of the product under investigation, provided that such allocation of costs has been historically utilised by the exporter or producer of the product, in particular in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development costs.

9. Production, administrative, selling and general costs shall be adjusted for those non-recurring items of cost which benefit future production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

10. The total quantitative amounts for administrative, selling and general costs and for profits typical of the industry shall be based on actual data pertaining to production and sales in the ordinary course of trade of like products by the exporter or producer of the import product which has been dumped.

When such total quantitative amounts cannot be determined on this basis, the amounts may be determined on the basis of:

1) actual amounts received and spent by the exporter or producer of the product under investigation in respect of production and sales of the same category of the product under investigation in the domestic market of the exporting country;

2) weighted average actual amounts received and spent in respect of production and sales of like products in the domestic market of the exporting country by other exporters or producers of the product;

3) other methods, provided that the amount of profits thus established shall not exceed profits normally derived by other exporters or producers of the same category of the product when it is sold in the domestic market of the exporting country.

11. In case of dumped imports from the exporting country whose domestic prices are regulated directly by the government or there is state monopoly of foreign trade, the normal value of the product may be determined on the basis of the price or calculated value of like products in an appropriate third country (compared with the stated exporting country), or the price of like products when it is delivered from the third country to other countries, including single customs territory of the Parties' State.

Where determination of the normal value of the product pursuant to the provisions hereof is impracticable, the normal value of the product may be established on the basis of the price actually paid or payable for like products in the single customs territory of the Parties' State and adjusted to the profits.

Article 12

Determination of the Export Price of the Product

1. Export price of the product shall be determined based on the sales data for the period of investigation.

2. In cases where there is no export price of the dumped imports or where it appears to the competent body that the export price is unreliable because of the link between the exporter and the importer of the product including the link of each of them with a third person, or because of the restrictive business practice

in the form of conspiracy in regard to the export price of the said product, the export price may be calculated on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not sold in the condition as imported into the single customs territory of the Parties' State, on such reasonable basis as the authorities may determine.

Article 13

Determination of Injury to a Domestic Industry of the Parties from Dumped Imports

1. Injury to a domestic industry of the Parties as the result of a dumped import product shall be established on the results of the analysis of the volume of the dumped import product, its effect on the prices of like products in the market of the Parties and domestic producers of the like products in the Parties' State.

2. For the purpose of this section injury to a domestic industry of the Parties shall be taken to mean material injury to a domestic industry of the Parties' State, threat of material injury to a domestic industry or substantial retardation of the establishment of such an industry of the Parties' State.

3. Injury to a domestic industry of the Parties shall be determined for the period of investigation.

During the investigation, trends over the recent 3 years in the market of the Parties preceding the date of submitting an application for the initiation of investigation shall be taken into consideration.

4. With regard to the volume of the dumped imports, the competent body shall determine whether there was a sensible increase in dumped imports of the product under investigation (either in absolute terms or relative to production or consumption of like products in the Parties).

5. With regard to the effect of the dumped imports on prices of like products in the market of the Parties' State, the competent body shall establish:

1) whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product in the market of the Parties' State;

2) whether the effect of such imports is to depress prices of like products in the market of the Parties' State to a significant degree;

3) whether the effect of such imports is to prevent price increases of like products in the market of the Parties' State, which otherwise would have occurred, to a significant degree.

6. Where imports of a product to the single customs territory of the Russian Federation from more than one exporting country are simultaneously subject to anti-dumping investigations, the competent body may cumulatively assess the effects of such imports only if it determines that:

1) the margin of dumping established in relation to the imports of product under investigation from each exporting country is more than *de minimis*, and the volume of imports of the product from each exporting country is not negligible under the provisions of paragraph 2 Article 31 hereof;

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 by the Parties' State.

7. The examination of the impact of the dumped imports on the domestic industry of the Parties' Stateshall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry of the Parties' State, including:

the extent to which the economic status of the domestic industry of the Parties' State was restored after the effects of earlier dumped or subsidised imports;

actual or potential decline in production, sales, market share in the Parties' State, profits, output, return on investments, or utilisation of production capacities;

factors affecting domestic prices in the market of the Parties;

the magnitude of the margin of dumping;

actual or potential negative effects on the production growth rates, inventories, employment, wages, ability to raise capital or investments and financial standing.

Nor can one or several of these factors necessarily give decisive guidance to determine injury to a domestic industry of the Parties' State from dumped imports.

8. Establishment of a causal link between the dumped imports and injury to a domestic industry of the Parties shall be based on examination of all relevant evidence and information at the disposal of to the competent body.

9. In addition to the dumped imports, the competent body shall also examine other known factors which at the same time are injuring the domestic industry of the Parties.

Factors which may be 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 and the export performance and productivity of the domestic industry of the Parties.

The injuries caused to the domestic industry of the Parties by these other factors must not be attributed to the injuries to the domestic industry of the Parties caused by the dumped imports.

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

If such separate identification of that production is not possible, the effects of the dumped imports on the domestic industry of the Parties shall be assessed by the examination of the production of the narrowest group or range of products or nomenclature of products, which include the like product, and for which the necessary information can be provided.

11. In making a determination regarding the existence of a threat of material injury to the domestic industry of the Parties from dumped imports, the competent body shall consider inter alia such factors as:

1) a significant rate of increase of dumped imports indicating the likelihood of further increase in such imports;

2) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating

the likelihood of substantially increased dumped exports, taking into account the availability of other export markets to absorb any additional exports;

3) whether imports of the product under investigation are entering at prices that will have a significant depressing or suppressing effect on domestic prices for the like products in the market of the Parties, and would likely increase demand for further imports of the product under investigation;

4) the exporter's inventories of the product being investigated.

12. The determination regarding the existence of a threat of material injury to the domestic industry of the Parties shall be made if in the course of the investigation on the results of the analysis of the factors specified in paragraph 11 of this Article, the competent body came to a conclusion on the irreversibility of the continuance of the dumped imports and on causing material injury to the domestic industry of the Parties by such products if no antidumping measures are applied.

Article 14

Imposition of Provisional Anti-Dumping Duties

1. In cases where the information submitted prior to completing the investigation evidences the existence of dumped imports and the resulting injury to the domestic industry of the Parties, the competent body, based on the report containing a preliminary determination, may decide on the application of anti-dumping measures by levying provisional anti-dumping duties in order to prevent injury to the domestic industry of the Parties caused by dumped imports during the period of investigation.

2. The provisional anti-dumping duties shall not be imposed sooner than 60 days of the date of initiation of the investigation.

3. The rate of the provisional anti-dumping duty shall be sufficient to eliminate the injury to the domestic industry of the Parties, but shall not exceed the margin of dumping as provisionally established.

4. In the event the amount of the provisional anti-dumping duty equals the provisionally established margin of dumping, the duration of such provisional anti-dumping duty shall not exceed 4 months, except for the cases where the said duration is extended to 6 months upon request by the exporters whose shares in the dumped import of the product under investigation constitute the major amount.

5. In the event the provisional anti-dumping duty rate is less than the provisionally established margin of dumping, the duration of such provisional anti-dumping duty shall not exceed 6 months, except for the cases where the said duration is extended to 9 months upon request by the exporters whose shares in the dumped import of the product under investigation constitute the major amount.

6. In cases where, based on the investigation results, the competent body determines that the grounds to impose anti-dumping duties do not exist, the amounts of the provisional anti-dumping duty shall be refunded to the payer under the procedure established by the laws of the Parties for the refund of customs charges, whose customs bodies collected the provisional anti-dumping duties.

7. In cases where, based on the investigation results, the competent body determines that the grounds to impose anti-dumping duties do exist, the amounts of the provisional anti-dumping duty shall be transferred to the budget under separate agreement of the Parties, which regulates depositing and allocation of the customs duties, any other duties, taxes and levies of equivalent effect.

8. In cases where, based on the investigation results, the competent body determines that the are grounds

to impose anti-dumping duties do exist, and the rate of the anti-dumping duty lower than the rate of the provisional anti-dumping duty is deemed expedient, the difference between them shall be refunded to the payer under the procedure established by the customs laws of the Party for the refund of customs charges, whose customs bodies collected the provisional anti-dumping duty, and the balance of the provisional anti-dumping duty shall be transferred to the budget under separate agreement of the Parties, which regulate depositing and allocation of the customs duties, any other duties, taxes and levies of equivalent effect.

9. If the rate of the definitive anti-dumping duty is higher than that of the provisional anti-dumping duty, the difference between them shall not be collected from the payer.

Article 15

Accepting of Voluntary Undertakings by the Exporter

of a Product under Investigation

1. Investigation proceedings may be suspended or terminated by the competent body without imposition of anti-dumping duties upon receipt in writing of satisfactory voluntary undertakings from any exporter of the product under investigation to revise its prices or to cease exports to the single customs territory of the Parties at prices lower its normal value (and on the support of such exporter's undertakings by its affiliated persons in the Parties) in case the competent body comes to a conclusion that accepting such undertakings eliminates the injurious effects of dumped imports and decides on the approval of these undertakings.

Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping.

The price increases may be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry of the Parties.

2. Voluntary undertakings shall not be sought or accepted from the exporters unless the competent body makes a preliminary affirmative determination of dumping and injury to the domestic industry of the Parties caused by such dumping.

3. Voluntary undertakings offered need not be accepted if the competent body considers their acceptance impractical, if the number of actual or potential exporters is too great, or for any other reasons.

Should the case arise and where practicable, the competent body shall provide to the exporters the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

4. Voluntary undertakings may be suggested by the competent body, but no exporter shall be forced to enter into such undertakings.

5. If a voluntary undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the competent body so decides.

If the competent body, based on the investigation results, comes to a negative determination of dumped imports or resulting injury to the domestic industry of the Parties, the exporter who entered into such undertakings shall be tacitly relieved of such undertakings, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the competent body may require that an undertaking be maintained for a reasonable period.

6. If, based on the investigation results, the competent body comes to an affirmative determination of dumped imports or resulting injury to the domestic industry of the Parties, the undertakings entered into by the exporter shall continue consistent with their terms.

7. The competent body may require any exporter to provide information relevant to the fulfilment of voluntary undertakings by the exporter and to permit verification of pertinent data.

Non-submission of the required information within the period established by the competent body, as well as a dissent to the verification of such information, shall be regarded as violation of voluntary undertakings entered into by the exporter.

8. In case of violation or withdrawal by the exporter of voluntary undertakings, the competent body may decide to apply an anti-dumping measure by the imposition of a provisional anti-dumping duty if the investigation was not concluded, or a definitive anti-dumping duty if the investigation was concluded with a final determination as to the grounds for its imposition.

Article 16

Imposition of Anti-Dumping Duties

1. An anti-dumping duty shall be applied in relation to the dumped import products which are exported by all exporters and cause injury to the domestic industry of the Parties, except the products from those exporters whose voluntary undertakings were approved of by the competent body in accordance with the provisions of Article 15 hereof.

2. The anti-dumping duty shall be adequate to remove injury to the domestic industry of the Parties, but shall not exceed established margin of dumping.

The competent body may decide on application of an anti-dumping duty to the amount less than the amount of established margin of dumping, provided such amount is adequate to remove injury to the domestic industry of the Parties.

3. The competent body shall determine an individual margin of dumping for each exporter or producer of the dumped import product, in regard to which an individual margin of dumping was established.

4. In addition to determination of an individual anti-dumping duty specified in paragraph 3 hereof, the competent body shall determine a single anti-dumping duty for all other exporter or producers of the product from the exporting country based on the highest margin of dumping established in the course of investigation.

Article 17

Duration and Review of Anti-Dumping Measures

1. An anti-dumping measure shall be applied upon the decision of the competent body only as long as and to the extent necessary to remove injury to the domestic industry of the Parties from dumped imports.

2. Duration of the anti-dumping measure shall not exceed 5 years of the date of application of the measure or of the date of completion of reinvestigation carried out with regard to changing factors and related to the examination of dumped imports and resulting injury to the domestic industry of the Parties or with regard to the duration of anti-dumping measures.

3. Reinvestigation with regard to the duration of the anti-dumping measure shall be carried out against an

application in writing submitted pursuant to the provisions of Article 29 hereof, or on the competent body's own initiative.

Reinvestigation with regard to the duration of the anti-dumping measure shall be carried out if there is evidence of possible resuming or continuance of dumped imports and injury to the domestic industry of the Parties if the anti-dumping measure lapses.

Application for reinvestigation with regard to the duration of the anti-dumping measure shall be submitted not later than 6 months before the anti-dumping measure lapses.

Reinvestigation shall be initiated before the anti-dumping measure lapses and be concluded within 12 months of the date of its initiation.

Before completion of reinvestigation carried out pursuant to the provisions hereof, application of the anti-dumping measure shall be extended by the decision of the competent body.

When the competent body, based on the results of investigation with regard to the duration of the anti-dumping measure, determines that there are no grounds to apply the anti-dumping measure, amounts of anti-dumping duties levied within the period for which the anti-dumping measure was extended shall be refunded to the payer under the procedure established by the customs laws of the Party for the refund of customs charges, whose customs bodies collected the provisional anti-dumping duty.

Duration of the anti-dumping measure shall be extended by the competent body in case it determines, based on the results of reinvestigation with regard to the duration anti-dumping measure, a possibility of resuming or continuing of the dumped imports and injury to the domestic industry of the Parties.

4. Upon the competent body's initiative, or an application of the interested party, if less than a year passed since application of the anti-dumping measure, reinvestigation may be carried out for the purpose of determination of expediency to continue application of the anti-dumping measure and (or) its review, including review of an individual anti-dumping duty with regard to changing circumstances.

Depending on the purpose of the application to initiate reinvestigation, such an application should contain evidence that with regard to changing circumstances:

extension of the anti-dumping measure is not required to counteract dumping imports and remove injury to the domestic industry of the Parties from dumped imports; or

existing amount of the anti-dumping measure exceeds the amount sufficient to counteract dumped imports and remove injury to the domestic industry of the Parties from dumped imports; or

existing anti-dumped measure is not sufficient to counteract dumped imports and remove injury to the domestic industry of the Parties from dumped imports.

Reinvestigation carried out pursuant to this paragraph shall be completed within 12 months of the date of its initiation.

5. Reinvestigation also may be carried out to establish an individual margin of dumping for the exporter or producer who has not exported the dumped import product during the period of investigation.

Such reinvestigation may be initiated by the competent body if the exporter or producer submits respective application which contains evidence that they are not related to any of exporters and producers who are subject to anti-dumping measures, and that the exporter or producer export the product under

investigation to the single customs territory of the Parties or is binding by contractual obligations on exportation of significant volumes of such a product to the single customs territory of the Parties, termination or withdrawal of which will result in significant losses or heavy penalties for such exporter or producer.

No anti-dumping measure shall be levied on imports from such exporters or producers of the product under investigation to the single customs territory of the Parties during the reinvestigation for the purpose of establishing an individual margin of dumping.

Reinvestigation envisaged by this paragraph shall be initiated within as short a period as possible, and in any case within a period not exceeding 12 months.

6. Provisions of Section V hereof relating to submission of evidence and initiation of the anti-dumping investigation shall apply to reinvestigations envisaged by this paragraph with account for respective differences.

7. Provisions of this paragraph shall apply to the undertakings entered into by the exporter pursuant to Article 15 hereof with account for respective differences.

Article 18

Determination of Circumvention of Anti-Dumping Measures

1. For the purpose of this Article, circumvention of the anti-dumping measure shall be taken to mean changes in the product delivery method for the purpose of circumvention of the anti-dumping measure or withdrawal of the exporter from his voluntary undertakings.

2. Reinvestigation for the purpose of determination of circumvention of the anti-dumping measure shall be carried out against an application of the interested person or on the competent body's own initiative.

3. The application, as indicated in paragraph 2 hereof, shall contain evidence of:

1) circumvention of the anti-dumping measure;

2) neutralization of the anti-dumping measure as a result of circumvention and its effect on production volumes and (or) sales and (or) price of the like product;

3) existence, as a result of circumvention of the anti-dumping measure, of dumped import products (constituents and (or) derivatives of such a product). By normal value of the product, its constituents or derivatives shall be taken their normal value established during investigation, based on the results of which the anti-dumping measure was imposed with account for adjustments for the purpose of comparison.

4. Reinvestigation for the purpose of determination of circumvention of the anti-dumping measure shall be concluded within 9 months of the date of its initiation.

5. For the period of reinvestigation carried out pursuant hereto the competent body may impose anti-dumping duties on the constituents and (or) derivatives of the dumped import product imported to the single customs territory of the Parties from the exporting country, as well as on the dumped import product and (or) its constituents, and (or) derivatives imported to the single customs territory of the Parties from another exporting country.

6. If the competent body, based on the results of reinvestigation carried out pursuant hereto, fails to determine circumvention of the anti-dumping measure, amounts of anti-dumping duties paid or levied

pursuant hereto shall be refunded to the payer under the procedures established by the customs laws of the Party for the refund of customs charges, whose customs bodies collected the provisional anti-dumping duty.

7. The anti-dumping measure in case of determination, based on the results of reinvestigation, of circumvention of the anti-dumping measure applied hereunder may be extended by the competent body to its constituent and (or) derivatives of the dumped import product imported to the single customs territory of the Parties from the exporting country, as well as to the dumped import product, and (or) its constituents, and (or) derivatives imported to the single customs territory of the Parties from another exporting country.

IV. COUNTERVAILING MEASURES

Article 19

General Principles of Application

of Countervailing Measures

A countervailing measure shall be applied to any imported product upon whose production, exportation or transportation a specific subsidy of the exporting country was used, if it has been determined, based on the results of an investigation carried out by the competent body, that imports of such a product into the single customs territory of the Parties cause or threaten to cause material injury to the domestic industry of the Parties or considerably retard the establishment of such an industry of the Parties.

Article 20

Definition of Subsidy

Subsidy shall be taken to mean:

1) any form of support of profits or prices which grants a recipient of subsidies additional advantages, direct or indirect effect of which is an increase in export of the product from the exporting foreign country or decrease in the imports of like products to such foreign country;

2) financial aid by the subsidising body which grants the recipient additional advantages provided within the territory of the exporting country in the form of:

direct transfer of funds (including those in the form of grants, loans, and equity purchase), or obligations on the transfer of such funds (including in the form of loan guarantees);

writing off funds or complete or partial refusal to withdraw funds which should have been recorded as revenues of the exporting country, including by granting tax credits or duties levied on like products destined for internal consumption, or decrease or refund of such taxes or duties to the amount not exceeding actually paid amounts;

rendering of products or services on preferential or gratuitous terms except for products or services meant for supporting and developing of the general infrastructure, that is infrastructure not related to a certain producer and (or) exporter;

preferential purchase of products.

Article 21

Principles of Referring Subsidies of an Exporting Country

to Specific Subsidies

1. A subsidy of an exporting country shall be specific where the subsidising body or the laws of the exporting country explicitly limit access to a subsidy to certain enterprises.

2. For the purpose hereof, certain enterprises shall be interpreted as referring to a certain producer and (or) exporter, or a certain industry of the exporting country, or a group (union, association) of producers and (or) exporters or industries of the exporting country.

3. A subsidy shall be deemed as specific if the number of certain enterprises granted access to such subsidy is limited to the enterprises located in the geographical area under the jurisdiction of the subsidising body.

4. A subsidy shall not be deemed as specific where the laws of the exporting country or the subsidising body establishes general objective criteria or conditions determining absolute right to receiving a subsidy (depending, inter alia, on the number of employees engaged in production, or the volume of production) provided such criteria are strictly adhered to.

5. In any case, a subsidy of the exporting country shall be deemed as specific provided granting of such subsidy is accompanied by:

- 1) a limited number of certain enterprises granted access to a subsidy;
- 2) predominant use by certain enterprises;
- 3) granting disproportionately large amounts of subsidy to certain enterprises;
- 4) the choice of a favourable (preferential) manner by the subsidising body to grant a subsidy to certain enterprises.

6. Any subsidy of the exporting country shall be deemed as specific, where:

1) subsidy is contingent, in law of the exporting country or in fact, whether solely or as one of several other conditions, upon export performance. A subsidy shall be regarded as contingent in fact with the export results if granting of a subsidy not contingent in law of the exporting country with export results is contingent with actually past or potential export or export profits in practice. The fact of granting a subsidy to the exporting enterprises shall not mean granting a subsidy connected to the export of the product for the meaning hereof;

2) the subsidy is contingent, in law of the exporting country or in fact, whether solely or as one of several other conditions, with the use of domestic products instead of imported ones.

7. A decision of the competent body on referring a subsidy of the exporting country to a specific one shall rest upon evidence.

Article 22

Principles of Determination of Specific Subsidies

1. Specific subsidy shall be calculated based on the amount of profits of the recipient of such subsidy.

2. The amount of profits of the recipient of the specific subsidy shall be determined based on the following principles:

1) participation of the subsidizing body in the charter capital of the company shall not be treated as a subsidy unless such participation cannot be viewed as against ordinary investment practices (in particular, granting venture capital) in the territory of the exporting country;

2) a loan granted by the subsidizing body shall not be treated as a subsidy unless there is difference between the amount the company-recipient of a loan pays for the public loan and the amount it would have paid for the equal commercial loan which the company may raise in the loan market of the exporting country. Otherwise, the difference between such amounts shall be treated as a subsidy.

3) granting of a loan by the subsidizing body shall not be treated as a subsidy unless there is difference between the amount company-recipient of a loan pays for the loan granted by the subsidizing body, and the amount it would have paid for the equal commercial loan without state subsidy. Otherwise, the difference between such amounts adjusted to the difference in commission fess shall be treated as a benefit;

4) provision of products or services, or procurement by the subsidizing body shall not be treated as a subsidy unless the goods or services are provided for less than adequate amount, or procurement is effected for more than adequate amount. Adequacy of payments shall be determined on the basis of existing market conditions for sale/purchase of such products and services in the market of the exporting country, including price, quality, availability, liquidity, transportation and other terms of sale/purchase of the product.

Article 23

Determination of Injury to a Domestic Industry of the Parties from subsidized Imports

1. An injury to a domestic industry of the Parties shall be established on the basis of objective examination of the volume of the subsidised imports and the effect of the subsidised imports on prices for like products in the domestic market of the Parties and the domestic producers of like products in the Parties.

2. For the purpose of this Section, injury to a domestic industry of the Parties shall be taken to mean material injury or the threat of such, or material retardation in the establishment of such an industry of the Parties.

3. With regard to the volume of the subsidised imports, the competent body shall determine whether there was a sensible increase in subsidised imports (either in absolute terms or relative to production or consumption of like products in the Parties).

4. Where imports of a product to the single customs territory of the Russian Federation from more than one exporting country are simultaneously subject to investigations, the competent body may cumulatively assess the effects of such imports only if it determines that:

1) the amount of subsidy in each exporting country accounts for more than 1 per cent of its value, and the volume of subsidised imports from each exporting country is not negligible under the provisions of paragraph 2 Article 23 hereof;

2) a cumulative assessment of the effects of subsidised imports of the product is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and like products produced in the Parties.

5. When examining the effects of the subsidised imports on the prices of like products in the market of the Parties, the competent body shall determine:

1) whether the prices for the subsidised imported product were significantly lower than the prices for the like products in the market of the Parties;

2) whether the subsidised imports resulted in significant decline in prices for like products in the market of the Parties;

3) whether the subsidised imports prevented growth of like products in the market of the Parties which would have taken place in the absence of such imports.

6. The examination of the effects of the subsidised imports on the domestic industry of the Parties shall include an evaluation of all relevant economic factors which have a bearing on the state of the domestic industry of the Parties, including:

1) actual or potential decline in production, sales, market share in the Parties, profits, output, return on investments, or utilisation of production capacities;

2) factors affecting domestic prices in the market of the Parties;

3) actual or potential negative effects on cash flows, inventories, employment, wages, production growth rate and ability to raise capital or investments.

7. The effect of the subsidised imports on the domestic industry of the Parties shall be assessed in relation to the domestic production of like products in the Parties when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits.

If such separate identification of that production is not possible, the effects of the subsidised imports on the domestic industry of the Parties shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, and for which the necessary data can be provided.

8. In determining the existence of a threat of material injury to the domestic industry of the Parties caused by subsidised imports, the competent body shall consider all available factors, including:

1) the nature, amount of a subsidy or subsidies and their possible effect on trade;

2) rates of increase of subsidised imports indicating the likelihood of a further increase in such imports;

3) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidised exports, taking into account the availability of other export markets to absorb any additional exports;

4) whether imports of subsidised product are entering at prices that will have a significant depressing or suppressing effect on domestic prices for the like products in the market of the Parties, and would likely increase demand for further imports of subsidised product;

5) exporter's inventories of the subsidised product.

9. The determination regarding the existence of a threat of material injury to the domestic industry of the

Parties shall be made if in the course of the investigation on the results of the analysis of the factors mentioned in paragraph 8 hereof, the competent body came to a conclusion on the irreversibility of the continuance of the subsidised imports and on causing material injury to the domestic industry of the Parties by such imports if no countervailing measures are applied.

10. Establishment of a causal link between the subsidised imports and injury to a domestic industry of the Parties caused by such imports shall be based on examination of all relevant evidence and data available to the competent body.

11. In addition to the subsidised imports, the competent body shall also examine other known factors which at the same time are injuring the domestic industry of the Parties.

The injuries caused to the domestic industry of the Parties by these other factors must not be attributed to the injuries to the domestic industry of the Parties caused by the subsidised imports.

Article 24

Imposition of Provisional Countervailing Duties

1. In cases where information submitted before conclusion of investigation evidences the existence of subsidised imports and the resulting injury to the domestic industry of the Parties, the competent body, based on the report containing a preliminary affirmative determination, may decide on the application of countervailing measures by levying provisional countervailing duties for as short a period not exceeding 4 months, in order to prevent injury to the domestic industry of the Parties caused by subsidised imports during the investigation.

2. The provisional countervailing duty shall not be applied sooner than 60 calendar days of the date of initiation of the investigation.

3. The provisional countervailing duty shall be equal to the amount of the provisionally established amount of the specific subsidy of the exporting country per unit of subsidised and exported product.

4. In cases where, based on the investigation results, it was determined that the grounds for the imposition of countervailing duties do not exist, the amounts of the provisional countervailing duty shall be refunded to the payer under the procedure established by the customs laws of the Parties for the refund of customs charges, whose customs bodies collected the provisional anti-dumping duties.

5. In cases where, based on the investigation results, it was determined that the grounds for the imposition of countervailing duties do exist, the amounts of the provisional countervailing duty shall be transferred to the budget under separate agreement of the Parties, which regulates depositing and allocation of the customs duties, any other duties, taxes and levies of equivalent effect.

6. In cases where, based on the investigation results, it was determined that that the grounds for the imposition of countervailing duties do exist, and the rate of the countervailing duty lower than the rate of the provisional anti-dumping duty is deemed expedient, the difference between them shall be refunded to the payer under the procedure established by the customs laws of the Party for the refund of customs charges, whose customs bodies collected the provisional countervailing duty, and the remainder of the sums of the provisional countervailing duty shall be transferred to the budget under a separate agreement of the Parties, which regulates depositing and allocation of the customs duties, other duties, taxes and levies of equivalent effect.

7. If the rate of the definitive countervailing duty is higher than that of the provisional countervailing

duty, the difference between them shall not be collected from the payer.

8. The definitive countervailing duty shall apply provided a simultaneous investigation continues.

9. The provisional countervailing duty shall apply pursuant to Article 26 hereof.

Article 25

Accepting Voluntary Undertakings by a Subsidizing Foreign Country or an Exporter of the Product under Investigation

1. Investigation proceedings may be suspended or terminated by the competent body without the imposition of provisional or definitive countervailing duties upon a decision on the approval of voluntary undertakings received by it in writing, under which

an exporting country agrees to eliminate or limit subsidies or take other adequate measures to remove effects of the subsidies;

the exporter of the product under investigation agrees to revise his prices for the product (and on the support by the exporter's affiliated persons of the exporter's undertakings to revise the prices, if there are affiliated persons of the exporter in the Parties) so that the competent body comes to the determination that accepting such undertakings eliminates the injury to the domestic industry of the Parties.

Price increases under such undertakings shall not be higher than the amount of specific subsidy of the exporting country calculated per unit of the subsidised and exported product.

The price increases may be less than the amount of the specific subsidy of the exporting country calculated per unit of subsidised and exported product if such increases would be adequate to remove the injury to the domestic industry of the Parties.

2. The decision on the approval of voluntary undertakings shall not be made by the competent body unless it makes a preliminary affirmative determination on the existence of subsidised imports and injury to the domestic industry of the Parties caused by such imports.

3. The decision on the approval of voluntary undertakings shall not be made by the competent body if it comes to the determination that such undertakings are unacceptable due to the great number of actual or potential exporters of the products under investigation or for any other reasons. In such cases the competent body shall provide to the exporters the reasons for the non-approval of the exporters' undertakings by the competent and shall give the exporter an opportunity to make comments thereon.

4. The competent body shall require any exporter and an authorised body of an exporting country who offers voluntary undertakings to provide a non-confidential version of such undertakings, so that it may be made available to other interested parties involved.

5. Voluntary undertakings may be suggested by the competent body, but no exporter shall be forced to enter into such undertakings.

6. If a voluntary undertaking is accepted by the competent body, the investigation of subsidised imports and injury to the domestic industry of the Parties caused by such imports shall nevertheless be completed if the exporting country so desires or the competent body so decides.

7. If the competent body, based on the investigation results, comes to a negative determination of subsidised imports or resulting injury to the domestic industry of the Parties, the exporting country or the exporters who entered into such undertakings shall be tacitly relieved of such undertakings except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the competent body may require that the voluntary undertakings be maintained for a reasonable period.

8. If the competent body, based on the investigation results, comes to an affirmative determination of subsidised imports or resulting injury to the domestic industry of the Parties, the voluntary undertakings shall continue consistent with their terms.

9. The competent body may require any exporting country or an exporter from whom undertakings have been approved of, to provide information relevant to the fulfilment of such undertakings by the exporting country or the exporter and to permit verification of pertinent data.

Non-provision of the required information within the period established by the competent body, as well as dissent to the verification of such information shall be regarded as violation of voluntary undertakings entered into by the exporting country or the exporter.

10. In case of violation or withdrawal by an exporting country or the exporter of voluntary undertakings, the competent body may decide to apply a countervailing measure by the imposition of a provisional countervailing duty if the investigation was not concluded, or a definitive countervailing duty if the investigation was concluded with a final determination as to the grounds for its imposition.

In case of any violation by an exporting country or by the exporter of voluntary undertakings, such exporting country or exporter shall be given the opportunity to comment thereon.

11. The rate of the provisional or definitive countervailing duties that may be imposed under the provisions of paragraph 10 of this Article shall be specified in the affirmative determination of the competent body.

Article 26

Imposition and Application of Countervailing Duties

1. A decision on imposition of a countervailing duty may be made by the competent body during the application period of a specific subsidy granted by an exporting country.

2. Countervailing duties shall be imposed after a proposal to hold consultations has been made to an exporting country granting a specific subsidy, however, the country refused from such consultations or no mutually acceptable decision has been reached during such consultations.

3. The countervailing duty shall be applied in respect of the product imported by all exporters and found to be subsidised and causing injury to the domestic industry, except to the product imported by those exporters whose voluntary undertakings were approved by the competent body.

The competent body may impose individual countervailing duty on certain exporters.

4. The rate of a countervailing duty shall not exceed the amount of a specific subsidy by an exporting country calculated per unit of the subsidised and exported product.

In case subsidies are granted as provided by various subsidising programmes, their accumulated amount shall be considered.

The rate of a countervailing duty can be less than the amount of a specific subsidy by an exporting country if such lesser duty would be adequate to remove the injury to the domestic industry of the Parties.

5. Upon assessment of the rate of a countervailing duty, the competent body shall take due account of representations in writing made by consumers of the Parties whose economic interests may be affected by the imposition of the countervailing duty.

Article 27

Duration and Review of Countervailing Measures

1. A countervailing duty shall be applied upon the decision of the competent body as long as and to the extent necessary to remove injury to the domestic industry of the Party from subsidised imports.

2. Duration of the countervailing measure shall not exceed 5 years of the date of application of the measure or of the date of reinvestigation carried out with regard to changing factors and related to simultaneous examination of subsidised imports and resulting injury to the domestic industry of the Contracting Parties, or with regard to the duration of the countervailing measure.

3. Reinvestigation with regard to the duration of the countervailing measure shall be carried out by the competent body against an application in writing submitted pursuant to the provisions of Article 29 hereof, or on the competent body's own initiative.

Reinvestigation with regard to the duration of the countervailing measure shall be carried out if there is evidence of possible resuming or continuance of subsidised imports and injury to the domestic industry of the Parties if the countervailing measure lapses.

Application for reinvestigation with regard to the duration of the countervailing measure shall be submitted not later than 6 months before the countervailing measure lapses.

Reinvestigation shall be initiated before the countervailing measure lapses and be concluded within 12 months of the date of its initiation.

Before completion of the reinvestigation carried out pursuant to the provisions hereof, application of the countervailing measure shall be extended by the decision of the competent body.

When the competent body, based on the results of reinvestigation with regard to the duration of the countervailing measure, determines that there are no grounds to apply the countervailing measure, the amounts of the countervailing measure levied within the period for which such countervailing measure was extended shall be refunded to the payer under the procedure established by the customs laws of the Parties for the refund of customs charges, whose customs bodies collected the countervailing duty.

Duration of the countervailing measure shall be extended by the competent body in case it determines, based on the results of reinvestigation with regard to the extension of the countervailing measure, a possibility of resuming or continuing of the subsidised imports and injury to the domestic industry of the Parties.

4. The competent body shall review the need for the continued imposition of the countervailing duty and (or) its review, including the review of the amount of an individual countervailing measure, on its own initiative or, provided that not less than a year has passed since the imposition of the countervailing duty, upon request by any interested party, due to changing circumstances.

Depending on the purpose of the application to initiate reinvestigation, such an application should

contain evidence with regard to changing circumstances:

continuance of the countervailing measure shall not be necessary to prevent subsidized imports and eliminate the injury to the domestic industry of the Parties as a result of subsidized imports; or

existing amount of the countervailing measure exceeds the amount sufficient to counteract subsidized imports and remove injury to the domestic industry of the Parties from subsidized imports; or

existing countervailing measure is not sufficient to counteract subsidized imports and remove injury to the domestic industry of the Parties from subsidized imports.

Reinvestigation with regard to changing circumstances shall be completed within 12 months of the date of its initiation.

5. Provisions of Section V hereof relating to submission of evidence and initiation of investigation shall apply to reinvestigation envisaged by this paragraph with account for respective differences.

6. Provisions of this paragraph shall apply to undertakings entered into by the exporting country or exporter pursuant to Article 25 hereof with account for respective differences.

Article 28

Determination of Circumvention of Countervailing Measures

1. Circumvention of the countervailing measure shall be taken to mean changes in the product delivery method for the purpose of circumvention of the countervailing measure or withdrawal from voluntary undertakings.

2. Reinvestigation for the purpose of determination of circumvention of the countervailing measure shall be carried out against an application of the interested person or on the competent body's own initiative.

3. The application, as indicated in paragraph 2 hereof, shall contain evidence of:

1) circumvention of the countervailing measure;

2) neutralization of the countervailing measure effect (as a result of circumvention) on the production volumes and (or) sales and (or) price of like products in the market of the Parties;

3) benefits from specific subsidy to the producer and (or) exporter of the product (constituents and (or) derivatives of such a product).

4. For the period of reinvestigation carried out pursuant hereto the competent body may impose countervailing duties on the constituents and (or) derivatives of the subsidized import product imported from the exporting country, as well as on the subsidized import product and (or) its constituents, and (or) derivatives imported from another exporting country.

5. If the competent body, based on the results of reinvestigation carried out to establish circumvention of the countervailing measure, fails to determine circumvention of the countervailing measure, amounts of countervailing duty paid or levied pursuant hereto shall be refunded to the payer under the procedures established by the customs laws of the Party for the refund of customs charges, whose customs bodies collected the countervailing duty.

6. The countervailing measure in case of determination, based on the results of reinvestigation carried out to establish circumvention of the countervailing measure, of circumvention of the countervailing measure applied hereunder may be extended by the competent body to its constituent and (or) derivatives of the subsidized import product imported from the exporting country, as well as on the subsidized import products which are not originating from the exporting country.

7. Reinvestigation of circumvention of the countervailing measure shall be concluded within 9 months as of the date of its initiation.

V. CONDUCTING INVESTIGATIONS

Article 29

Grounds for Conducting Investigations

1. An investigation to determine the existence of increased imports and the resulting serious injury or threat of such injury to the domestic industry of the Parties, as well as to determine the existence of dumped or subsidised imports and the resulting material injury, threat of such injury or substantial retardation of the establishment of such an industry in the Parties shall be conducted by the competent body upon a written application or on the competent body's own initiative.

2. The application mentioned in paragraph 1 of this Article shall be submitted by:

1) the producer of a like product or directly competitive product (in cases where an application on the imposition of a special safeguard measure is submitted), or a like product (in cases where an application on the imposition of an anti-dumping or countervailing measure is submitted) in the Parties, or an authorized representative;

2) an association of producers most of whom are involved in the production of a like product or directly competitive product (in cases where an application on the imposition of a special safeguard measure is submitted) or a like product (in cases where an application on the imposition of an anti-dumping or countervailing measure is submitted) in the Parties or its authorised representative.

3. The application mentioned in paragraph 1 of this Article shall be submitted together with the evidence of support of such application on the part of producers of a like product or directly competitive product in the Parties. The following evidence of the support of such application shall prove sufficient:

1) documents showing that the application has been joined by other producers of a like product or directly competitive product in the Parties who together with the applicant produce the major part of the total production volume of like products or directly competitive product in the Parties (where the submission of the application for the imposition of a special safeguard measure is concerned);

2) documents verifying that the production share of a like product by producers in the Parties (applicant included) who supported the application constitutes not less than 25 per cent of the total production volume of like the product in the Parties, provided that the production volume of like products by producers in the Parties (applicant included) who supported the application constitutes more than 50 per cent of the production volume of like products by producers in the Parties who (have supported or have not expressed their consent) in regard to the application (where the submission of the application for an anti-dumping or countervailing measure is concerned).

4. The application mentioned in paragraph 1 of this Article shall contain information on the following:

1) the identity of the applicant and a description of the volume and value of the domestic production of the directly competitive product (where an application for the imposition of a special safeguard measure is submitted), or like products (when an application for the imposition of an anti-dumping or countervailing measure is submitted), by the domestic industry of the Parties over 3 years preceding the date of submitting an application; as well as a description of the volume and value of the domestic production of like products or directly competitive product (where an application for the imposition of a special safeguard measure is submitted), or like products (where an application for the imposition of an anti-dumping or countervailing measure is submitted) by producers in the Parties who have supported the application, and their share of like products or directly competitive product (where an application for the imposition of a special safeguard measure is submitted) or like products (when an application for the imposition of an anti-dumping or countervailing measure is submitted) in the total volume of the domestic production in the Parties;

2) a description of the product imported to the single customs territory of the Parties in whose respect the imposition of a special safeguard, anti-dumping or countervailing measure is proposed with the indication of respective codes of the Foreign Economic Activity Commodity Nomenclature of the Eurasian Economic Community;

3) the names of exporting countries or the countries of origin or export of that product in question, based on the information provided by customs statistics;

4) the identity of each known producer and (or) exporter of the product in the exporting country, and the identity of known importers and main known consumers of the product in the Parties;

5) information on any changes in the volume of imports of the product to the single customs territory of the Parties for the 3 years preceding the date of submitting an application, in whose respect the imposition of a special safeguard measure, anti-dumping measure or countervailing measure is proposed;

6) information on any changes in the volume of exports of a like product or directly competitive product (where an application for the imposition of a special safeguard measure is submitted) or like product (where an application for the imposition of anti-dumping or countervailing measures is submitted) from the single customs territory of the Parties for the 3 years preceding the date of submitting an application.

5. Apart from the data defined in paragraph 4 of this Article depending on the measure suggested in the application the applicant shall provide the following data:

1) evidence of increased imports of the product in respect of which a special safeguard measure is proposed; evidence of existence of serious injury or threat of such injury to the domestic industry of the Parties from increased imports of the product in respect of which a special safeguard measure is proposed; a proposal to impose a special safeguard measure with indication of its extent and duration; and the plan of actions to adapt the domestic industry of the Parties to operating in the context of foreign competition within the duration of a special safeguard measure as proposed by the applicant (where the application for the imposition of a special safeguard measure is concerned);

2) evidence of the existence of dumped imports of the product in respect of which the imposition of an anti-dumping measure is proposed; evidence of existence of material injury or threat of such injury or substantial retardation of the establishment of such an industry in the Parties from dumped imports of the product; and a proposal to impose an anti-dumping measure with indication of its extent and duration (where the application for the imposition of an anti-dumping measure is concerned);

3) evidence of the existence and nature of a specific subsidy granted by an exporting country with the indication, if possible, of the amount of such subsidy; evidence of the existence of material injury, or threat of

such injury, or substantial retardation of the establishment of such an industry in the Parties from subsidised imports of the product; and a proposal to impose a countervailing measure with the indication of its extent and duration (where the application for the imposition of a countervailing measure is concerned).

6. The day of submitting an application shall be deemed the day of registration of the application by the competent body.

7. For the purpose of comparability, indicators contained in the application shall be expressed in the uniform monetary units and units of quantity.

8. Information contained in the application shall be certified by directors of the domestic producers submitting same, as well as by their employees responsible for the maintenance of accounting books and reporting records with regard to data directly relating to the producer involved.

9. The application with the enclosed non-confidential version (in the event the application contains confidential information) shall be submitted in Russian to the competent body and shall be registered on the day of getting the said application on file thereof.

10. The application for the imposition of a safeguard, antidumping or countervailing measure shall be rejected in case:

the data defined in paragraphs 3 to 5 of this Article is not submitted together with the application;

the data specified in paragraphs 3 to 5 of this Article submitted by the applicant is not true.

The rejection of the application on other bases shall not be supposed.

11. The competent body shall, prior to deciding on the initiation of the investigation, notify in writing the exporting country of the application on the imposition of an anti-dumping or countervailing measure.

For the purpose of making a decision on the initiation of an investigation within thirty calendar days from the day of the registration of the application defined in Paragraph 1 of this Article.

The said period may be extended in order to enable the authorities to receive additional information from the applicant, however, for whatever purposes, such period cannot exceed sixty calendar days

12. The competent body, prior to deciding on the initiation of the investigation, shall examine, within 30 calendar days from the day of the registration of the application, accuracy and adequacy of the evidence and data contained in the application in accordance with the provisions of paragraphs 3 to 5 of this Article. The said period may be extended in order to enable the competent body to receive additional information from the applicant, however, for whatever purposes, such period cannot exceed 60 calendar days.

13. The application may be revoked by the applicant prior to the initiation of the investigation or in the course thereof.

Where the application is revoked prior to the initiation of an investigation, such application shall be deemed non-filed.

Where the application is revoked during the course of investigation, the investigation shall be terminated without applying a special safeguard, anti-dumping or countervailing measure.

14. Until a decision on the initiation of an investigation is made the data contained in the application shall

not be made available to public.

Article 30

Initiation and Conducting of an Investigation

1. The competent body, prior to the expiry of the period indicated in paragraph 12 of Article 29 hereof shall decide on the initiation of an investigation or on rejection of same.

2. Should a decision be made to reject an investigation, the competent body shall notify in writing the applicant of the reasons for rejection the investigation within no longer than 10 calendar days from the day of making the decision.

3. Should a decision be made to initiate an investigation, the competent body shall notify in writing an authorised body of the exporting country, as well as other interested parties known to the competent body, of the decision made and shall, within no longer than 10 business days since the date of making the decision on the initiation of the investigation, ensure that the notification of the initiation of the investigation be published in the official print publication.

4. The competent body may decide on the initiation of the investigation, inter alia at its own discretion, only in the event the competent body has evidence of the existence of increased imports and resulting serious injury or threat of such injury to the domestic industry of the Parties, or the existence of dumped or subsidised imports and the resulting material injury or threat of such injury or substantial retardation of the establishment of such an industry in the Parties.

Absence of such evidence shall be the grounds for a decision on the rejection of conducting the investigation.

5. Interested parties shall have the right to submit a written application of the intention to take part in the investigation. The said parties shall be recognised as participants to the investigation since the date of submission of the application to the competent body.

6. Not later than the date in the notification on the investigation initiation, the participants to the investigation shall have the right to provide the information necessary for conducting the investigation including confidential information with the indication of the source of such information.

7. The competent body shall have the right to require an interested party to provide additional information, which may be disregarded in the event it was provided upon expiry of 30 calendar days since the day of receiving such request.

Pursuant to a substantiated written application of the interested party this term may be extended by the competent body.

The request shall be deemed to have been received on the day it is delivered to a representative of the interested party, or within 7 calendar days from the mailing date.

8. In cases when any interested party rejects to provide necessary information to the competent body or fails to submit such information within the prescribed period, or significantly obstructs the investigation, this interested party shall be deemed to be uncooperative and final determinations, affirmative and negative, may be made by the competent body on the basis of the facts available.

9. The competent body shall provide participants to the investigation with a copy of the application or a

non-confidential version, if the application contains confidential information.

The information submitted in written form by any interested party as evidence related to the investigation shall be provided in writing to participants in the investigation by the competent body with due regard to the protection of confidential information.

The competent body shall give the participants to the investigation an opportunity to familiarise themselves with other information used in the course of investigation which is related to the investigation and is not confidential.

10. Upon request of the interested parties, the competent body shall provide consultations as to the subject of the investigation.

11. Throughout the investigation all interested parties shall have a full opportunity for the defense of their interests. To this end, the competent body shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties.

There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.

12. Consumers of the product under investigation, who use the product in industry, representatives of public associations of consumers, governmental and local authorities, and other persons shall have the right to submit to the competent body information relating to the investigation.

13. Investigations shall not exceed:

1) 9 months from the date of the initiation of investigation on the grounds of an application for imposition of a special safeguard measure. This period may be extended by the competent body no longer than 3 months;

2) 12 months from the date of the initiation of investigation on the grounds of the application for the imposition of an anti-dumping or a countervailing measure. This period may be extended by the competent body no longer than 6 months.

14. The investigation proceeding shall not hinder the procedures of customs clearance of a product under investigation.

Article 31

Peculiarities of Conducting an Anti-Dumping Investigation

1. The anti-dumping investigation shall be terminated without application of an anti-dumping measure if the competent body determines that the margin of dumping is less than the *de minis* margin of dumping; or that the volume of the past or potential dumped imports or the extent of material injury or threat of such injury, or substantial retardation of the establishment of such an industry in the Parties is negligible.

2. The volume of the dumped imports from a certain exporting country shall be deemed negligible in case the volume of such dumped imports is found to account for less than 3 per cent of the total volume of import of a like product to the single customs territory of the Parties, provided that the exporting countries, which individually accounts for less than 3 per cent of the total volume of import of a like product to the single customs territory of the Parties, collectively account for not more than 7 per cent of the total volume of the import of a like product to

the single customs territory of the Parties.

3. The competent body, before making a determination based on the results of the anti-dumping investigation, shall send to participants in the investigation a non-confidential version of the final determination and give them an opportunity to make comments thereon.

Article 32

Peculiarities of Conducting a Countervailing Investigation

1. The countervailing investigation shall be terminated without application of a countervailing measure if the competent body determines that the amount of a specific subsidy granted by an exporting country is minimal, or the volume of the past or potential subsidised import or the extent of material injury or threat of such injury, or substantial retardation of the establishment of such an industry in the Parties is negligible.

2. The amount of a specific subsidy shall be deemed negligible if it totals less than 1 per cent of the cost of the product under investigation.

The volume of the subsidised imports normally shall be deemed negligible in case the volume of such subsidised imports is found to account for less than 1 per cent of the total volume of import of a like product to the single customs territory of the Parties, provided that the exporting countries, which individually accounts for less than 1 per cent of the total volume of import of a like product to the single customs territory of the Parties, collectively account for not more than 3 per cent of the total volume of the import of a like product to the single customs territory of the Parties

3. The countervailing investigation related to subsidized import product originating from a developing country which enjoys the national system of preferences of the Parties shall be terminated if the competent body determines that total amount of specific subsidies granted by an exporting country in respect of this product does not exceed 2 per cent of its per unit cost, or that the import share from such country in the total volume of the import of the product to the single customs territory of the Parties is found to account for less than 4 per cent, provided that the accumulated share in the import of the product to the single customs territory of the Parties from the developing countries which individually account for less than 4 per cent in the total volume of the import of the product to the single customs territory of the Parties, does not exceed 9 per cent of the total volume of import of this product to the single customs territory of the Parties.

4. The competent body, before making a determination based on the results of the countervailing investigation, shall send to participants in the investigation a non-confidential version of the final determination and give them an opportunity to make comments thereon

Article 33

Peculiarities of Determining the Domestic Industry of the Parties in Case of Dumped Imports or Subsidised Imports

1. When conducting an anti-dumping or a countervailing investigation, the domestic industry of the Parties shall be construed as provided for in Article 2 hereof, except in cases as provided for in paragraph 2 and 3 of this article.

2. In case domestic producers of a like product in the Parties are simultaneously importers of the product that is allegedly dumped or subsidised imports, the domestic industry of the Parties refers only to the rest domestic producers of a like product in the Parties.

The domestic industry of the Parties may also refer only to the rest domestic producers of a like product in the Parties, in case:

1) individual producers of like product in the Parties directly or indirectly control exporters or importers of the product under investigation;

2) individual exporters or importers of the product under investigation directly or indirectly control producers of a like product in the Parties;

3) individual producers of a like product in the Parties and exporters or importers of the product under investigation are being directly or indirectly controlled by a third party;

4) individual producers of a like product in the Parties and exporters or importers of the product under investigation directly or indirectly control a third party.

3. Under exceptional circumstances when determining the domestic industry territory of the Parties may be considered as the territory where there operate two or several competing markets and producers of the Parties in such markets may be considered as a separate industry of the Parties provided that such producers sell on the said markets, for the purposes of consumption or processing, not less than 80 per cent of the like products which they produce, and the demand for like products on the said markets is not satisfied by domestic producers of such a product who reside on the rest of the territory of the Parties.

Under such circumstances the existence of material injury or threat of such injury, or substantial retardation of the establishment of such an industry in the Parties from dumped or subsidised imports may be determined even if the major part of the domestic industry of the Parties has not been injured, provided that the sale of dumped or subsidised imports is concentrated on one of the said competing markets and the dumped or subsidised imports causes injury to all or nearly all domestic producers of like products in the Parties within the said market.

4. In case the domestic industry of the Parties is construed as provided for in paragraph 3 of this article and it is decided, based on the investigation results, to impose an anti-dumping or a countervailing measure, such measure may be applied to the total import of the product to the single customs territory of the Parties.

In this case an anti-dumping or a countervailing duty shall be imposed only after granting to the exporters of the product under investigation a chance to discontinue the export of such a product to this region at dumping prices (in case of dumped imports) or subsidised prices (in case of subsidised imports) or to accept voluntary obligations in relation to the terms and conditions of export to the single customs territory of the Parties, provided that the exporters have not used their chance.

Article 34

Public Hearings

1. Based on a written request from any of the participants in the investigation and provided within the time-limit established hereby, the competent body shall arrange for public hearings to be held.

2. The competent body shall send a notification of when and where public hearings will be held as well as the list of issues to be considered in the course of such hearings to the investigation participants.

The time for the public hearing shall be allocated no earlier than in 15 calendar days from the date notification has been sent.

3. The following parties shall have the right to participate in public hearings: participants in the investigation or their representatives, as well as persons involved by the participants to provide information related to the investigation.

In the course of public hearings participants of the investigation can air their opinion and provide their evidence in regard to the investigation. A representative of the competent body has the right to ask participants in the public hearings questions related to the essence of the facts they report. The participants in the investigation shall also have the right to ask one another questions and provide answers to these questions. The participants of public hearings shall not be obliged to disclose the information recognised as confidential.

4. The information that is provided orally in the course of public hearings shall be taken into consideration in the course of the investigation, if it has been provided to the competent body by participants in the investigation in written form within 15 calendar days after public hearings.

Article 35

Data Collection in the Course of Investigation

1. After a decision on the initiation of an anti-dumping or a countervailing investigation is made the competent body shall provide known exporters and (or) producers of the product under investigation with a list of questions, they shall give answers.

The list of questions shall also be sent to producers of a like product or directly competitive product (in case of a special safeguard investigation) or like product (in case of an anti-dumping or countervailing investigation) in the Parties.

2. The exporters and (or) producers of the product whom have been provided with the list of questions shall have 30 calendar since the date of the receipt of such questions to submit their answers to the competent body.

Upon a motivated written request made by the exporters and (or) producers of the product under investigation the said period may be extended by the authorities conducting the investigation but for no longer than 14 calendar days.

3. The list of questions shall be considered received by the exporter and (or) producer of the product in 7 calendar days since it has been sent by post or since the date it has been handed over to a representative of the exporter and (or) producer.

The answers to the questions included in the list of questions shall be considered received by the competent body if they have reached the said competent body as confidential and non-confidential versions not later than 7 calendar days since the expiration of the 30-day period defined in paragraph 2 of this Article or since the date of expiration of its extension.

4. The competent body in the course of investigation shall verify accuracy and truthfulness of information reported by the interested parties. The competent body shall have the right to inspect exporters, producers and (or) importers of the product under investigation, and (or) producers of like product or directly competitive product in the Parties.

Inspections of exporters and (or) producers of the product under investigation shall be conducted provided that, first, the relevant exporter and (or) producer of the product under investigation consents to such inspection, and second, the exporting foreign country has been notified in advance and does not object to the investigation within its territory.

5. For the purposes of verifying information received in the course of investigation or acquiring additional information relating to the investigation in progress, the competent body shall have the right to send its representatives to the seats of interested parties, to gather information, to hold consultations and negotiations with the interested parties, to familiarise with samples of the product and to undertake other steps as needed for the investigation.

Article 36

Interested Parties

1. Interested parties involved in investigation shall include:

1) domestic producer of a like product or directly competitive product, or a like product in the Parties, and an association of the producers in the Parties a majority of the members of which are producers of like products or directly competitive product, or the like product;

2) foreign exporter, foreign producer or domestic importer of a product under investigation, and an association of individuals a majority of the members of which are producers, exporters or importers of the product from an exporting country or a country of origin of the product;

3) the government or an authorised agency of the exporting country or the country of origin of the product;

4) consumers of the product under investigation if they use the product in production, and associations of such consumers in the Parties;

5) public associations of consumers, if the product is consumed mostly by physical persons.

2. In the course of investigation interested parties shall act independently or through their representatives to be duly empowered.

Where an interested party acts through its authorised representative in the course of an investigation the competent body shall keep the interested party completely informed on the subject matter of the investigation solely through the said representative of such interested party.

Article 37

Confidential Information

1. Information released by an interested party to the competent body shall be treated as confidential if substantiated by evidence of the interested party that its disclosure would be of significant competitive advantage to any third party or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information.

Such information shall not be disclosed without permission of the interested party submitting it, except as otherwise provided by laws of each of the Parties.

2. Interested parties providing confidential information shall also provide a non-confidential summary thereof.

These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

In exceptional cases the interested parties may claim, providing evidence to support their claim, that the information is not susceptible of summary, provide the reasons on the impossibility of providing confidential information in the form of summary.

3. If the competent body finds that the reasons presented by the interested party do not warrant classifying the presented information as a confidential information, or that the interested party who failed to present a non-confidential summary of the confidential information also failed to provide evidence to support the claim that the information is not susceptible of summary or presented evidence that does not support the claim that the information is not susceptible of summary, the competent body may disregard such information.

4. The competent body and other parties having access to the confidential information during the investigation shall be liable for making the confidential information public, as provided for by the laws of the country where the competent body has the seat.

Article 38

Consultations for the Establishment of the Existence of Alleged Specific Subsidy Granted by a Foreign Country

1. After the application has been accepted for consideration, but before a decision to initiate an investigation has been made, the competent body may make a proposal to the authorised body of the foreign country exporting the product in respect of which it is suggested that a countervailing measure duly be imposed, to hold consultations with the aim of clarifying the situation concerning the existence, degree and effects of any alleged specific subsidy and arriving a mutually agreed solution.

Such consultations shall continue during the investigation.

2. The consultations as provided for in paragraph 1 of this article shall not prevent the competent body from initiating the investigation as well as imposing of a countervailing measure.

Article 39

Notification of the Decisions Related to the Investigation

1. The notification of the initiation of the investigation shall contain:

- 1) full description of the product under investigation;
- 2) name of the exporting country;
- 3) a summary of the facts testifying to the expediency of the decision on the initiation of the investigation;
- 4) a summary of the facts testifying to the injury that has been caused to the domestic industry of the Parties;
- 5) the address to which interested parties can send in writing their opinions and the information related to the investigation;
- 6) the period during which participants in the investigation can file a request on holding public hearings;
- 7) the period during which participants in the investigation can send in writing their comments and the

information related to the investigation

The periods indicated in the notification of the initiation of the investigation shall be determined by the competent body and shall be not less than 90 calendar days since the date of publication of the notification of the initiation of the investigation.

2. The competent body shall ensure publication, in the official print publication, of the notification of suspension and termination of the investigation, as well as of any decision on imposing, applying, reviewing or terminating a special safeguard, anti-dumping or countervailing measure.

Such notifications shall be sent to the authorised body of the exporting country and to other interested parties of the exporting country known to the competent body.

3. A notification of the imposition of a provisional special, provisional anti-dumping or provisional countervailing duty shall contain a detailed explanation for the preliminary determination by the competent body on the existence of increased imports or resulting serious injury or threat of such injury to the domestic industry of the Parties, the existence of dumped or subsidised imports and resulting material injury or threat of such injury or substantial retardation of the establishment of such an industry in the Parties, as well as a matters of fact which are grounds for the decision on the imposition of a provisional special, provisional anti-dumping or provisional countervailing duty.

The notification about the introduction of an interim anti-dumping or countervailing duty shall also contain the following information:

1) name of the exporter of the product under investigation or, in the event this information cannot be supplied, name of the exporting foreign country;

2) description of the product under investigation sufficient for customs clearance;

3) amount of the dumping margin and detailed description of reasons for the choice of method of calculation and for comparison of the normal value of the product with its export price (in case of imposition of a provisional anti-dumping duty);

4) reasons for determining existence of a subsidy and the estimated amount of the subsidy per unit (in case of imposition of a provisional countervailing duty);

5) grounds for determining injury to the domestic industry of the Parties;

6) grounds for affirmative determination on the existence of dumped or subsidised imports and resulting injury to the domestic industry of the Parties.

4. Based on the results of the special safeguard investigation the competent body shall, for the period of not more than ten calendar days since the completion of the investigation, publish the notification of the key conclusions that have been made by it upon the examination of the available information

5. A notification of the completion of the investigation upon results of which it was decided to impose an anti-dumping or a countervailing duty or to approve voluntary obligations shall contain:

1) interpretation of the final determination of the competent body based on the results of the investigation;

2) references to the facts which formed the basis for the decision;

3) information as provided for in paragraph 3 of this article;

4) statement of the reasons as to why in the course of investigation certain arguments and demands of exporters and importers of product under investigation were accepted or rejected;

5) statement of the reasons for the adoption of resolution as provided for in paragraph 7–11 of Article 10 of this Agreement.

6. A notification of the termination or suspension of an investigation following the approval of voluntary obligations shall contain the non-confidential version of such undertakings.

7. The provisions of this Article shall apply *mutatis mutandis* to notifications of the initiation and completion of reinvestigations.

Article 40

Non-application of Special Safeguard,

Anti-Dumping and Countervailing Measures

1. The competent body at the conclusion of investigation may decide on the non-application of a special safeguard, anti-dumping or a countervailing measure envisaged by this Agreement, even in case the application of such measures is consistent with the criteria laid down by the provisions hereof.

The above decision can be made if the application of the aforesaid measures may cause injury to the interests of the Parties and can be revised where its underlying reasons have changed.

2. The competent body shall ensure publication, in the official print publication, of the notification of non-application of a special safeguard, anti-dumping or countervailing measure.

VI. FINAL PROVISIONS

Article 41

Settlement of Disputes

Disputes relating to application or interpretation of the provisions of this Agreement shall be settled by way of consultations and negotiations between the Parties, and if they fail to settle a dispute amicably it will be referred to the Court of the Eurasian Economic Community.

Article 42

Introduction of Amendments

As agreed by the Parties, amendments and additions may be made to this Agreement in the form of separate protocols.

Article 43

Entry into Force, Accession and Withdrawal

The procedures for the coming into force of this Agreement, accession thereto and withdrawal therefrom shall be set forth in the Protocol of October 6, 2007 on the procedures for the coming into force of

international treaties aimed at formation of contractual and legal framework for the Customs Union, withdrawal from and accession to the treaties.

Done in the city of Moscow on January 25, 2008 in a single original in the Russian language.

The original text of the Agreement shall be retained by the Integration Committee of the Eurasian Economic Community, which, being the depositary of this Agreement, shall send to each Party an authenticated copy.

For the Government

of the Republic of Belarus

S. Sidorsky

For the Government

of the Republic of Kazakhstan

K. Masimov

For the Government

of the Russian Federation

V. Zubkov