

On approval of the Rules for conducting an investigation in order to prepare a conclusion on the appropriateness of applying a compensatory measure in relation to member states of the Eurasian Economic Union

Invalidated Unofficial translation

Decree of the Government of the Republic of Kazakhstan dated September 9, 2019 No. 670. Abolished by the Decree of the Government of the Republic of Kazakhstan dated August 3, 2023 No. 641

Unofficial translation

A footnote. Abolished by the Decree of the Government of the Republic of Kazakhstan dated August 3, 2023 No. 641 (it is put into effect after ten calendar days after the date of its first official publication).

In accordance with paragraph 1 of Article 22-1 of the Law of the Republic of Kazakhstan dated April 12, 2004 “On Regulation of Trading Activities”, the Government of the Republic of Kazakhstan **RESOLVES**:

1. To approve the attached Rules for conducting an investigation in order to prepare a conclusion on the appropriateness of applying a compensatory measure in relation to the member states of the Eurasian Economic Union.

2. This resolution shall be enforced after ten calendar days after the day its first official publication.

Prime Minister of the Republic of Kazakhstan

A. Mamin

Approved by the
Decree of the Government of the
Republic of Kazakhstan
dated September 9, 2019 No. 670

Rules

for conducting an investigation in order to prepare a conclusion on the appropriateness of applying a compensatory measure in relation to the member states of the Eurasian Economic Union

Chapter 1. General Provisions

1. These Rules of investigation in order to prepare a conclusion on the appropriateness of applying compensatory measures in relation to the member states of the Eurasian Economic Union (hereinafter - the Rules) are developed in accordance with paragraph 1 of Article 22-1 of the Law of the Republic of Kazakhstan dated April 12, 2004 “On Regulation trading activities ”(hereinafter referred to as the Law) and

determine the conditions and procedure for conducting an investigation in order to prepare a conclusion on the appropriateness of applying compensatory measures in relation to Member States Eurasian Economic Union (hereinafter - the EAEU).

2. For the purposes of these Rules, the following basic concepts are used:

1) damage - the deterioration of the situation in the sector of the economy of the Republic of Kazakhstan, confirmed by evidence, that occurred as a result of the import of industrial goods from the territory of the EAEU Member State that provided a subsidy for the production, transportation, storage of this goods, and is expressed in a reduction in the volume of production and sale of similar goods in the Republic Kazakhstan, reducing the profitability of the production of such goods, the negative impact on inventories, employment, wages and salaries investments in this industry;

2) interested parties - a producer of a similar product, an association of producers, the majority of whose participants are producers of a similar product, a producer of a subsidized product that is the subject of an investigation, an association of producers of such a subsidized product, most of whose participants are producers of a given product, a subsidized EAEU member state and (or) the competent authority of the subsidizing member state of the EAEU, public associations of consumers (in case iruemy goods being the subject of the investigation is consumed mainly individuals) subsidized consumers goods being under investigation (in case they use this product in the production process) and the association of users;

3) specific subsidy - a measure of state support to the EAEU member states, the specificity of which is determined on the basis of the principles set forth in the Protocol on Unified Rules for the provision of industrial subsidies, which is Appendix No. 28 to the EAEU Agreement of May 29, 2014 (hereinafter the "Agreement");

4) industrial goods - goods classified in groups 25 - 97 of the Commodity Nomenclature of Foreign Economic Activity of the EAEU (hereinafter - the EAEA EA), as well as fish and fish products, with the exception of goods classified in accordance with the EAEA EAEA in the subheadings 2905 43 000 0 and 2905 44, positions 3301, 3501 - 3505, subheadings 3809 10 and 3824 60, positions 4101 - 4103, 4301, 5001 00 000 0 - 5003 00 000 0, 5101 - 5103, 5201 00 - 5203 00 000 0, 5301 and 5302 (subheading 2905 43 000 0 - mannitol, subheading 2905 44 - sorbitol, heading 3301 - essential oils, heading 3501-3505 - albuminoid substances, modified starches, glues Subheading 3809 10 - Substances for surface treatment, Subheading 3824 60 - Sorbitol , other products, headings 4101-4103 - hides and leather raw materials, heading 4301 - raw furs, headings 5001 00 000 0 - 5003 00 000 0 - raw silk and silk waste, items 5101 -5103 - animal hair and hair, subheadings 5201 00 - 5203 00 000 0 - raw cotton, cotton waste, cotton combed cotton, item 5301 - raw linen, item 5302 - raw hemp) (see product description optionally exhaustive);

5) compensatory measure - a measure to neutralize the negative impact of a specific subsidy of a subsidizing EAEU member state on the sector of the economy of the EAEU member state that has applied for the introduction of this measure;

6) producer of subsidized goods - producer of subsidized goods of a member state of the EAEU that has provided a specific subsidy;

7) authorized body - the central executive body that forms the trade policy and exercises leadership, as well as intersectoral coordination in the field of trade activities;

8) a similar product - an industrial product produced in the Republic of Kazakhstan that is completely identical to the product used for the production, export from the territory of the EAEU Member State or the transportation of which a specific subsidy was used, or in the absence of such a product - another product that has characteristics similar to those goods in the production, export from the territory of the EAEU Member State or the transportation of which a specific subsidy was used.

Chapter 2. Conditions and procedure for conducting an investigation in order to prepare a conclusion on the appropriateness of applying a compensatory measure in relation to the EAEU member states

3. The conditions for conducting an investigation in order to prepare a conclusion on the appropriateness of applying a compensatory measure in relation to the EAEU member states are the sufficiency and reliability of evidence and information.

4. Investigation in order to prepare a conclusion on the appropriateness of applying a compensatory measure in relation to the EAEU member states, as well as to establish the existence of damage to the sector of the national economy due to the import of subsidized goods from the territory of the member state that provided the specific subsidy, or the exclusion of similar goods from the market of the subsidizing state The EAEU member is carried out by the authorized body on the basis of the applicant's appeal or on their own initiative of the authorized body as uae referred to in paragraph 10 of these Rules.

5. The filed application of the applicant is subject to registration with the authorized body on the day of its receipt, which contains a list of information specified in the annex to these Rules.

6. The authorized body, before making a decision on the start of the investigation, shall notify in writing the competent authority of the EAEU Member State in whose territory the specific subsidy under consideration is provided, of the receipt of the appeal within the time periods specified in paragraph 7 of these Rules.

7. The authorized body, in order to decide on the start of the investigation, within 30 (thirty) calendar days from the date of registration of the appeal, studies the sufficiency and reliability of the evidence and information contained in this appeal, in

accordance with paragraph 4 of these Rules. In order to obtain additional information by the authorized body from the applicant, the specified period may be extended by no more than 10 (ten) calendar days.

8. After making the appeal for consideration and before deciding to start the investigation, the authorized body invites the competent authority of the EAEU Member State that provided the specific subsidy to conduct consultations in order to clarify the availability, size and use, as well as the consequences of providing the specific subsidy and in order to achieve a mutually acceptable solutions. Such consultations may also be conducted during the investigation.

9. The authorized body before the expiration of the period specified in paragraph 7 of these Rules, takes a decision to initiate an investigation or refuse to conduct it.

When making a decision on refusal to conduct an investigation, the authorized body in writing no more than 10 (ten) calendar days from the date of such a decision shall notify the applicant of the reason for the refusal to conduct an investigation.

The decision to refuse to conduct an investigation is taken if the applicant has not submitted relevant information within the time periods specified in paragraph 7 of these Rules, as well as the determination by the authorized body of insufficient and not reliable evidence and information submitted in accordance with paragraph 5 of these Rules.

When deciding to initiate an investigation, the authorized body shall notify in writing the applicant, the competent authority of the EAEU Member State that provided the specific subsidy, as well as other interested parties known to him of the decision made and ensures no more than 5 (five) business days from the date of adoption decision to initiate an investigation; publication of a notice of the initiation of an investigation on the Internet resource of the authorized body. The date of publication of the notice of the beginning of the investigation is recognized as the date of the beginning of the investigation.

10. The authorized body takes a decision to initiate an investigation (including on its own initiative) if this body has evidence of violation of the provisions of the Agreement and (or) damage to the national economy due to the import of subsidized goods to the market of the Republic of Kazakhstan or crowding out a subsidized product of a similar product from the market of a EAEU member state that has provided a specific subsidy, or of another EAEU member state.

11. After a decision has been taken to initiate an investigation, the authorized body shall send to known producers of similar goods and producers of subsidized goods that are the subject of investigation, a list of questions to which they provide answers in order to conduct an investigation.

The list of issues shall be deemed received from the date of its transfer directly to the representative of the manufacturer of a similar product or producer of a subsidized product or 7 (seven) calendar days from the date of sending this list by mail.

12. Producers of similar goods and producers of subsidized goods that are the subject of an investigation, to which a list of questions has been sent, submit their answers to these questions to the authorized body within 30 (thirty) calendar days from the date they receive such a list. Upon a motivated and written request of producers of similar goods and producers of subsidized goods that are the subject of investigation, the specified period may be extended by the authorized body, but not more than 10 (ten) calendar days.

13. In order to verify the information provided during the investigation or to obtain additional information related to the investigation, the authorized body may conduct an investigation in the territory of the EAEU Member State that has provided a specific subsidy, subject to the consent of the relevant producer of the subsidized goods being the subject of the investigation, and also subject to prior notification of representatives of the government of the corresponding EAEU Member State and the absence of objections to this EAEU Member State regarding the conduct of an investigation on its territory.

If it is necessary to verify the information provided during the investigation or to obtain additional information related to the ongoing investigation, the authorized body shall send its representatives to the location of the producers of similar goods to conduct consultations and negotiations with interested parties, to familiarize themselves with the samples of the subsidized goods being the subject of investigation, and taking other actions necessary for the investigation that do not contradict the legislation of the Republic of Kazakhstan.

14. The authorized body in the course of the investigation may send to the competent authorities of the EAEU Member State that has provided or is providing the subsidy in question, as well as interested parties, requests for information related to the ongoing investigation.

15. Interested parties shall submit, no later than the date specified in the notification of the start of the investigation, the information necessary for the investigation (including confidential information) indicating the source of their receipt.

In order to clarify the specified information, the authorized body may request additional information from interested parties.

16. Evidence and information related to the investigation shall be submitted to the authorized body in the state and Russian languages, and the original documents drawn up in a foreign language must be accompanied by a certified translation into the state and Russian languages in the prescribed manner.

17. The authorized body, taking into account the need to protect confidential information during the investigation, provides interested parties with their written request the opportunity to familiarize themselves with the information (non-confidential information) submitted in writing by any interested person as evidence related to the investigation. The authorized body provides the investigation participants with the opportunity to familiarize themselves with other information related to the investigation and used by it during the investigation, but which is not confidential.

18. Written notices, requests for information, requests for additional information, information submitted in writing as evidence related to the investigation, and other information related to the investigation referred to in paragraphs 9 , 14 , 15 and 17 of these Rules shall be sent by the authorized body to interested parties through the state body engaged in foreign policy activities.

19. The term of the investigation does not exceed 6 months from the date of the start of the investigation.

The investigation is considered completed on the day the authorized body sends a conclusion on the appropriateness of applying a compensatory measure for consideration by the Interdepartmental Commission of the Republic of Kazakhstan on foreign trade policy and participation in international economic organizations (hereinafter - the IAC).

20. Interested parties act during the investigation independently or through their representatives, who, in accordance with the legislation of the Republic of Kazakhstan, have duly executed powers.

If the interested person in the course of the investigation acts through an authorized representative, the authorized body brings to the interested person all information about the subject of investigation only through this representative.

21. Information provided by an interested person to an authorized body is considered confidential when this person submits evidence proving that the disclosure of such information will provide an advantage in competition to a third party or entail adverse consequences for the person who submitted the information, or for the person from whom this information is obtained. Confidential information shall not be disclosed without the permission of the interested person who submitted it, with the exception of cases provided for by the legislation of the Republic of Kazakhstan.

In order to provide all interested parties with information sufficient to understand the essence of the confidential information provided, the authorized body may require the non-confidential version of the interested person to present confidential information

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If, in response to this requirement, the interested person declares that confidential information cannot be presented in this form, this person shall submit the relevant justification.

If the authorized body establishes that the justifications presented by the interested person do not allow the information presented to be classified as confidential, or the interested person who did not submit the non-confidential version of the confidential information does not provide the corresponding justification or provides information that is not such a justification, the authorized the authority may not take this information into account.

22. The authorized body bears the responsibility provided for by the legislation of the Republic of Kazakhstan for the disclosure of confidential information.

Chapter 3. Making a conclusion on the appropriateness of applying a compensatory measure in relation to the EAEU member states

23. Based on the results of the investigation, the authorized body, within the time periods specified in paragraph 19 of these Rules, prepares a conclusion on the appropriateness of the application of a compensatory measure and sends it to the IAC for consideration.

If the IAC approves the conclusion on the introduction of a compensatory measure, the authorized body submits to the Government of the Republic of Kazakhstan a draft of an appropriate appeal to the head of the Government of a subsidizing member state of the EAEU on the need to use a compensatory measure in connection with a violation of the provisions of the Agreement and / or damage to the national economy in order to neutralize material damage to the industry of the Republic of Kazakhstan.

24. In the case of a negative opinion of the MVK on the appropriateness of applying a compensatory measure, the authorized body shall send a justified refusal to the applicant within 10 (ten) business days from the date of registration of the minutes of the meeting of the IEC in the authorized body.

Appendix
to the Rules of
investigation in order to
prepare a conclusion on the
appropriateness of applying a
compensatory measure in
relation to the member states of the
Eurasian Economic Union

List of information provided by the applicant

1. Information about the applicant (address, phone, fax, E-mail, place of registration, last name, first name, patronymic of the head (if any);

2. Description of the goods (indicating the country of origin and the code of the commodity nomenclature of foreign economic activity of the Eurasian Economic Union (hereinafter - the EAEU));

3. Information on the availability, nature and amount of a specific subsidy;

4. Information on producers of subsidized goods;

5. Information on national producers of similar goods;

6. Information on the change in the volume of import of subsidized goods to the territory of the Republic of Kazakhstan for 3 (three) calendar years preceding the date of filing of the appeal;

7. Information on the change in the volume of export of similar goods from the territory of the Republic of Kazakhstan to the territory of other EAEU member states;

8. Evidence of damage to a branch of the economy of the Republic of Kazakhstan due to the import of a subsidized product or the displacement of a similar product from the market of a subsidizing EAEU Member State. Evidence of material damage to a branch of the economy of the Republic of Kazakhstan or the threat of causing it as a result of the import of a subsidized product, or the exclusion of a similar product from the market of a subsidiary member state of the EAEU, is based on objective factors that characterize the economic situation of the branch of the economy and can be expressed in quantitative terms (including , the volume of production of the goods and the volume of their sales, the share of goods on the market of a member state of the EAEU, the cost of production of goods, the price of goods, TED on capacity utilization, productivity, profit margins, profitability, production and sales of goods, the level of investment in the sector of the economy of the Republic of Kazakhstan);

9. Information on changes in the volume of imports of similar goods (in quantitative and value terms) to the customs territory of the EAEU for 3 (three) calendar years preceding the date of filing of the application;

10. Information on the change in the volume of export of similar goods (in quantitative and value terms) from the customs territory of the EAEU for 3 (three) calendar years preceding the date of filing of the appeal;

11. Analysis of other factors that could have an impact on the industry of the Republic of Kazakhstan in the analyzed period.