

## **On special protective, antidumping and compensation measures in respect of third states**

### *Unofficial translation*

The Law of the Republic of Kazakhstan dated 8 June 2015 No. 316-V.

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This Law regulates public relations linked with applying special protective, antidumping and compensation measures in respect of third states for the purpose of protection of economic interests of the Republic of Kazakhstan.

## **Chapter 1. GENERAL PROVISIONS**

### **Article 1. Basic definitions used in this Law**

The following basic definitions shall be used in this Law:

- 1) preliminary special duty – the duty applied upon import of goods to the customs territory of the Eurasian Economic Union in respect of which, the body carrying out investigation, prepared a preliminary conclusion on occurrence of increased import that inflicted or threatens to incur serious damage to the branch of economy of member-states;
- 2) preliminary antidumping duty – the duty applied upon import of goods to the customs territory of the Eurasian Economic Union in respect of which, the body carrying out investigation prepared a preliminary conclusion in the course of investigation on occurrence of dumping import and material damage of the branch of economy of member-states conditioned by this, threat of its infliction or substantial delay of creating the branch of economy of member-states;
- 3) preliminary compensation duty – the duty applied upon import of goods to the customs territory of the Eurasian Economic Union in respect of which the body carrying out investigation prepared a preliminary conclusion in the course of investigation on occurrence of the subsidized import and material damage to the branch of economy of member-states conditioned by this, threat of its infliction or substantial delay of creating the branch of economy of member-states;
- 4) preceding period – three calendar years directly preceding the date of filing an application on conduct of investigation for which there are necessary statistical data;
- 5) special duty – the duty that shall be applied upon imposition of the special protective measure and shall be recovered by the customs bodies of member-states independently from the import customs duties;
- 6) special quota – establishment of particular import volume of goods to the customs territory of the Eurasian Economic Union within which the goods shall be delivered to the

customs territory of the Eurasian Economic Union without payment of the special duty, and in excess of which – with payment of special duty;

7) special protective measure – the measure on restriction of increased import of goods to the customs territory of the Eurasian Economic Union that shall be applied under decision of the Eurasian Economic Commission by introduction of import quota including preliminary special duty;

8) connected persons – the persons that shall satisfy one or several of the following criteria:

each of these persons is an employee or a head of organization created with participation of another person;

they are business partners, i.e. are linked with contractual relations; act for the purpose of deriving of profit and jointly incur expenditures and losses linked with carrying out of the joint activity;

they are employers and employees of one organization;

any person directly or indirectly possesses, controls or is a nominal holder of five and more percent of voting shares or stocks of both persons;

one of the persons directly or indirectly controls another person;

both persons directly or indirectly are under control of a third party;

both persons together directly or indirectly control a third party;

are in marital relations, relations of kinship or affinal relationship of an adopter or adoptee, as well as a trustee and a ward;

9) antidumping duty – the duty that shall be applied upon imposition of an antidumping measure and shall be recovered by the customs bodies of member-states independently from the imported customs duty;

10) antidumping measure – the measure on a counteraction to dumping import that is applied under decision of the Eurasian Economic Commission by imposition of the antidumping measure, including preliminary antidumping duty, or approval of price obligations accepted by an expert;

11) dumping margin – proportion expressed as a percentage of normal value of goods with the deduction of the export price of these goods to its export price or difference between normal value of goods and its export price expressed in absolute measure;

12) indirect control – a possibility of an individual or legal entity to assign decisions adopted by the legal entity or through several legal entities between which there is a direct control;

13) Eurasian Economic Commission (hereinafter – Commission) – the national body carrying out the activity within the powers provided in accordance with the Contract on Eurasian Economic Union ratified by the Law of the Republic of Kazakhstan dated 14

October 2014 “On ratification of the Contract on Eurasian Economic Union” (hereinafter – the Contract on Eurasian Economic Union), and with international treaties within the Eurasian Economic Union;

14) import quota – a limitation of import of goods to the customs territory of the Eurasian Economic Union in respect of its quantity and (or) costs;

15) confidential information – restricted information containing commercial and other secret protected by the Law, with the exception of state secrets;

16) member-states – the states that are members of the Eurasian Economic Union and parties of the Contract on Eurasian Economic Union;

17) branch of economy of the member-states – all the producers of analogous goods (for the purpose of antidumping and compensation investigations) or analogous or direct competing goods (for the purpose of special protective investigations) in member-states or those of them, the share of which in a total production volume in member-states of respectively analogous goods or analogous or direct competing products is essential part, but no less than twenty five percent;

18) threat of inflicting serious damage to the branch of economy of the member-states – inevitability of inflicting serious damage to the branch of economy of member-states confirmed by evidences;

19) serious damage to the branch of economy of the member-states – the general deterioration of a situation confirmed by evidences and linked with production of analogous or direct competing goods in member-states that shall be expressed in essential deterioration of production, trade and financial situations of the branch of economy of member-states and shall be determined as a rule for the preceding period;

20) material damage to the branch of economy of the member-states – deterioration of the situation of the branch of economy of member-states confirmed by evidences and that may be expressed in particular in reduction of the production volume of analogous goods in the member-states and volume of its realization at the market of the member-states, decrease of profitability of the production of goods, as well as negative impact on trade stocks, employment, salary level in this branch of economy of the member-states and level of investments to this branch of economy of the member-states;

21) threat of inflicting material damage to the branch of economy of the member-states – inevitability of infliction of material damage to the branch of economy of member-states confirmed by evidences;

22) compensation duty – the duty that shall be applied upon imposition of the compensation measure and shall be recovered by the customs bodies of the member-states independently from the import customs duties;

23) compensation measure – the measure on neutralizing the influence of specific subsidies of exporting third country to the branch of economy of member-states applied under decision of the Commission by imposition of a compensation duty (including preliminary

compensation duty) or approval of voluntary obligations accepted by an authorized body of the subsidized third country or exporter;

24) ordinary course of trade – buy and sell of analogous goods at the market of exporting third country at the price no lower than its average weighted production cost determined proceeding from the average weighted manufacturing costs and average weighted trading, administrative and total costs;

25) subsidized import – import of goods to the customs territory of the Eurasian Economic Union upon production, export or transportation of which the specific subsidies of exporting third country were used;

26) subsidized body – the state body or body of local self-government of exporting third country or the person acting under a commission of the relevant state body or body of local self-government or authorized by the relevant state body or body of local self-government in accordance with the legal act or proceeding from the factual circumstances;

27) authorized body in the field of foreign trade activity (hereinafter – authorized body) – the central executive body carrying out management, as well as cross-sector coordination in the field of regulation of foreign trade activity within the limits provided by the legislation of the Republic of Kazakhstan;

28) investigation – the procedure carried out by the body carrying out investigations preceding the imposition of special protective, antidumping and compensation measures;

29) body carrying out investigations – the body determined by the Commission as responsible for conduct of special protective, antidumping and compensation investigations in the customs territory of the Eurasian Economic Union;

30) payers – the persons determined in accordance with the Code of the Republic of Kazakhstan "On customs regulation in the Republic of Kazakhstan"

31) direct control – a possibility of an individual or legal entity to determine decisions adopted by the legal entity by commission of one or several of the following actions:

carrying out of the functions of its executive body;

obtainment of the right to determine conditions of carrying on entrepreneurial activity of a legal entity;

disposal of more than five percent of total voting shares being accounted for the shares (stocks) constituting a charter capital of a legal entity;

32) direct competing goods – the goods compared with the goods, that are or may become an object of special protective investigation (repeated investigation) according to own designation, application, qualitative and technical characteristics, as well as other main properties in such a way, that the customer substitutes or is ready to substitute the goods in a process of consumption that are or may become the object of investigation (repeated investigation);

33) analogous goods – the goods fully identical to the goods that are or may become an object of investigation (repeated investigation), or in absence of such goods – the other goods

having characteristics being close to the characteristics of the goods that are or may become the object of investigation (repeated investigation);

34) third countries – the countries and (or) associations of countries that are not participants of the Contract on Eurasian Economic Union, as well as territories included to the classifier of countries of the world approved by the Commission;

35) export price – the price that is paid or shall be paid upon import of goods to the customs territory of the Eurasian Economic Union.

**Footnote. Article 1 as amended by the Law of the Republic of Kazakhstan dated 26.12.2017 No. 124-VI (shall be enforced from 01.01.2018).**

## **Article 2. Legislation of the Republic of Kazakhstan on special protective, antidumping and compensation measures in respect of third countries**

1. Legislation of the Republic of Kazakhstan on special protective, antidumping and compensation measures in respect of third countries is based on the Constitution of the Republic of Kazakhstan, consists of this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If an international treaty ratified by the Republic of Kazakhstan establishes other rules than those provided by this Law, the rules of the international treaty shall be applied.

## **Article 3. Scope of application of this Law**

1. The force of this Law shall apply to relations linked with application of the special protective, antidumping and compensation measures in respect of third countries, for the purpose of protection of economic interests of the Republic of Kazakhstan.

2. This Law shall not apply to relationships associated with the rendering of services, performance of work, transfer of exclusive rights to intellectual property items or granting the right to use intellectual property items, making investments, currency control and control of specific goods, regulated by other laws of the Republic of Kazakhstan.

**Footnote. Article 3 as amended by Law of the Republic of Kazakhstan No. 173-VII of 28.12.2022 (shall be enacted upon expiration of sixty calendar days after its first official publication).**

## **Article 4. Competence of the authorized body**

The authorized body shall:

1) interact with an authority carrying out investigations on the issues of special protective, antidumping and compensation measures;

2) submit proposals on initiation of investigations preceding applying of special protective, antidumping and compensation measures to a body carrying out investigations;

3) coordinate work of state authorities of the Republic of Kazakhstan on the issues of special protective, antidumping and compensation measures;

4) form and coordinate proposals on the issues of special protective, antidumping or compensation measures with the interested state authorities of the Republic of Kazakhstan;

5) develop regulatory legal acts on the issues of special protective, antidumping or compensation measures;

6) interact with official bodies of other countries and international organizations;

7) carry out other powers provided by this Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

**Footnote. Article 4 as amended by the Law of the Republic of Kazakhstan dated 02.04.2019 No. 241-VI (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 5. Decisions on imposition, application, review, cancellation of the special protective, antidumping or compensation measure**

Decisions on imposition and application, review or cancellation of the special protective, antidumping or compensation measure or non-applying the relevant measure shall be adopted by the Commission.

#### **Article 6. Calculation, payment and return of special, antidumping and compensation duties**

Calculation of special, antidumping, compensation duties, occurrence and termination of the obligation on paying these duties, determination of the terms and procedure for their payment, entry, distribution and return of special, antidumping, compensation duties shall be carried out in the manner provided by the Code of the Republic of Kazakhstan “On customs regulation in the Republic of Kazakhstan” for import customs duties.

Payment, entry, distribution and return of preliminary special, preliminary antidumping, preliminary compensation duties shall be carried out in accordance with the Contract on Eurasian Economic Union.

**Footnote. Article 6 as amended by the Law of the Republic of Kazakhstan dated 26.12.2017 No. 124-VI (shall be enforced from 01.01.2018).**

### **Chapter 2. SPECIAL PROTECTIVE MEASURES**

#### **Article 7. General principles of applying a special protective measure**

1. The special protective measure may be applied to the goods in case if on the basis of results of investigation it is established that the import of these goods to the customs territory of the Eurasian Economic Union is carried out in such increased quantities (in absolute or relative indices to the total production volume in member-states of analogous or direct

competing goods) and on such terms that it inflicts serious damage to the branch of economy of the member-states or creates a threat of inflicting such damage.

2. The special protective measure shall be applied in respect of goods imported to the customs territory of the Eurasian Economic Union from the exporting third country independently from the country of origin with the exception of:

1) goods originated from developing or the least developed third country-user of tariff preference system of the Eurasian Economic Union approved by the Commission until the import ratio of these goods from such country exceeds three percent of the total import volume of these goods to the customs territory of the Eurasian Economic Union, upon condition that the summary import ratio of these goods from developing and the least developed third countries the ratio of each of which is no more than three percent from the total import volume of these goods to the customs territory of the Eurasian Economic Union, does not exceed nine percent of the total import volume of these goods to the customs territory of the Eurasian Economic Union;

2) goods originated from the member-state of the Commonwealth of Independent States that is a party of the Contract on zone of free trade area ratified by the Law of the Republic of Kazakhstan dated 25 October 2012 “On ratification of the Contract on free trade zone” upon performance of conditions established by Article 9 of this Contract.

#### **Article 8. Establishment of serious damage of the branch of economy of member-states or threat of its infliction due to increased import**

1. For the purpose of establishment of serious damage of the branch of economy of member-states or threat of its infliction due to increased import to the customs territory of the Eurasian Economic Union, the body carrying out investigations shall assess objective factors in the course of investigation that may be expressed in quantitative indices and that have an impact on economic situation of the branch of economy of the member-states including as follows:

1) temps and volume of the import growth of goods that are the objects of investigation in absolute and relative indices to the total production volume or consumption in the member-states of analogous or direct competing goods;

2) ratio of imported goods that are the objects of investigation in a total sales volume of these goods and analogous or direct competing goods at the market of member-states;

3) level of prices for imported goods that are the objects of investigation in comparison with the level of prices for analogous or direct competing goods produced in the member-states;

4) change of sales volume at market of the member-states of analogous or direct competing goods produced in the member-states;

5) change of production volume of analogous or direct competing goods, productivity, use of production capacities, amount of incomes and losses, as well as level of employment in the branch of economy of the member-states.

2. Serious damage to the branch of economy of the member-states or threat of its infliction due to increased import shall be established on the basis of results of analysis of all the evidences and details related to the case and being at disposal of the body carrying out investigations.

3. The body carrying out investigations shall analyze other well-known factors besides the increased import due to which, the serious damage to the branch of economy of the member-states is inflicted in the same period or threat of its infliction is created. Mentioned damage shall not be related to serious damage of the branch of economy of the member-states or threat of its infliction due to increased import to the customs territory of the Eurasian Economic Union.

#### **Article 9. Imposition of preliminary special duty**

1. In critical circumstances when delay of applying special protective measure would lead to infliction of damage to the branch of economy of the member-states being difficult to eliminate afterwards, the Commission may adopt a decision on imposition of preliminary special duty before completion of the relevant investigation for the term not exceeding two hundred calendar days on the basis of the preliminary conclusion of the body carrying out investigations, in accordance with which there are obvious evidences that the increased import of goods that are objects of investigation inflicted or threatens to inflict serious damage to the branch of economy of the member-states.

Investigation shall be continued for the purpose of receipt of the final conclusion of the body carrying out investigations.

2. Before adoption of a decision by the Commission on imposition of preliminary special duty, the authorized body shall coordinate proposal on imposition of preliminary special duty with the interested state bodies of the Republic of Kazakhstan, prepared by the body carrying out the investigation on the basis of preliminary conclusion.

3. The body carrying out investigations shall notify the authorized body of exporting third country in written form, as well as other interested persons known to him (her) on a probable imposition of preliminary special duty.

4. Upon request of the authorized body of exporting third country on holding of consultations on the issue of imposition of preliminary special duty, such consultations shall be started after adoption of a decision by the Commission on imposition of preliminary special duty.

5. In case if on the basis of the results of investigation by a body carrying out investigations, it is established that there are no grounds for imposing a special protective measure, or the decision on non-applying the special protective measure is adopted in



accordance with Article 42 of this Law, the sums of preliminary special duty shall be subject to return to a payer in accordance with Article 6 of this Law.

6. In case if on the basis of results of investigation the decision on applying a special protective measure is adopted (including by imposition of import or special quota), the term of validity of the preliminary special duty shall be counted to the total validity term of the special protective measure, and the sums of preliminary special duty from the date of entering of the decision on applying the special protective measure into force adopted on the basis of results of investigation, shall be subject to entry and distribution in accordance with Article 6 of this Law.

7. In case if on the basis of results of investigation, the imposition of a lower rate of a special duty is recognized efficient that the rate of preliminary special duty, the sums of preliminary special duty being relevant to the sum of the special duty calculated according to established rate of the special duty shall be subject to entry and distribution in accordance with Article 6 of this Law.

Sums of preliminary special duty exceeding the sum of the special duty calculated according to established rate of the special duty shall be subject to return to a payer in accordance with the Laws of the Republic of Kazakhstan.

8. In case if on the basis of results of investigation, the imposition of higher rate of a special duty is recognized efficient that the rate of preliminary special duty, the difference between the sums of special duty and preliminary special duty shall not be recovered.

9. Decision on imposition of preliminary special duty shall be adopted as a rule no later than six months from the date of beginning of the investigation.

#### **Article 10. Application of special protective measure**

1. Social protective measure shall be applied under decision of the Commission in amount and within the term required for prevention or elimination of a serious damage to the branch of economy of the member-states or threat of its infliction, as well as simplification of the adaptation process of the branch of economy of the member-states to dynamic economic conditions.

2. Before adoption of a decision by the Commission on application of the special protective measure, the authorized body shall coordinate a proposal with interested state bodies of the Republic of Kazakhstan on imposition of a special duty, import or special quota prepared by the body carrying out investigations.

3. In case if the special protective measure is applied by establishing import quota, the amount of such quota shall not be lower than average annual import volume of goods that is the object of investigation (in quantitative or monetary terms), for the previous period, with the exception of necessary cases of establishing a lower amount of import quota for elimination of a serious damage to the branch of economy of the member-states or threat of its infliction.

4. Upon distribution of an import quota between exporting third countries, the possibility for holding of consultations on the issues of distribution of the import quota between them shall be provided to those of them being interested in carrying out goods delivery being the objects of investigation to the customs territory of the Eurasian Economic Union.

5. In cases if holding of consultations provided by paragraph 4 of this Article is impossible, or in the course of their holding the agreement on such distribution is not reached, the import quota shall be distributed between exporting third countries having interest in the export of goods being the objects of investigation to the customs territory of the Eurasian Economic Union in the ratio fully formed upon import of these goods from these exporting third countries for the previous period on the basis of total import volume of such goods in quantitative or monetary terms.

By this, any special factors that might or may have an impact on a regular course of trading in goods shall be considered.

6. In case if the growth of import of goods being the objects of investigation from separate exporting third countries increased disproportionately in percentage in respect of the gross growth of import of such goods for three years preceding the date of filing an application on conduct of investigation, the Commission may distribute the import quota between such exporting third countries considering absolute and relative indices of growth of import of these goods to the customs territory of the Eurasian Economic Union from such exporting third countries.

The provisions of this paragraph shall be applied exclusively in case of establishment of existence of a serious damage to the branch of economy of the member-states by the body carrying out investigations.

7. In cases provided by decisions of the Commission, the distribution of volumes of import quota shall be carried out depending on the type of goods in respect of which the decision on establishing import quota is adopted by the authorized body and other state bodies within own competence.

8. The procedure for applying a special protective measure in the form of import quota shall be established by the decision of the Commission. In case if such decision provides licensing of import, the licenses shall be granted in the manner established by the legislation of the Republic of Kazakhstan on permissions and notifications for goods, the import of which is subjected to quantitative restrictions.

9. In case if the special protective measure is applied through special quota, the determination of amount, distribution and application of such quota shall be carried out in the manner provided for import quota by paragraphs 1-8 of this Law.

#### **Article 11. Validity term and review of a special protective measure**

1. Validity term of a special protective measure shall not exceed four years with the exception of a case of extension of the validity term of such measure in accordance with paragraph 2 of this Article.

2. Validity term of a special protective measure mentioned in paragraph 1 of this Article may be extended under decision of the Commission, if by the results of repeated investigation conducted by the body carrying out investigations, it is established that for elimination of a serious damage to the branch of economy of the member-states or threat of its infliction the extension of the validity term of the special protective measure is required and there are evidences that the relevant branch of economy of the member-states takes measures promoting adaptation of this branch to dynamic economic conditions.

3. Upon adoption of a decision by the Commission on extension of the validity term of a special protective measure, this measure may not be more restrictive than the special protective measure being in force as for the date of adoption of such decision.

4. In case if the validity term of a special protective measure exceeds one year, the Commission shall mitigate gradually such special protective measure at regular intervals within the term of its validity.

In case if the validity term of a special protective measure exceeds three years, the body carrying out investigations shall carry out repeated investigation no later than upon expiry of a half of the validity term of such measure, on the basis of results of which the special protective measure may be preserved, mitigated or cancelled.

For the purpose of this Article, the mitigation of a special protective measure shall be regarded as increase of the volume of import quota or special quota or reduction of the rate of a special duty.

5. Total validity term of a special protective measure including the validity term of preliminary special duty and the term for which the force of the special protective measure is extended, shall not exceed eight years.

6. The special protective measure may not be applied repeatedly to the goods to which the special protective measure was applied previously within the term, equally to the validity term of the previous special protective measure. By this, the term within which the special protective measure shall not be applied may not be less than two years.

7. The special protective measure, the validity term of which is no more than one hundred eighty days may be newly applied to the same goods independently from the provisions established by paragraph 6 of this Article, if no less than one year from the date of imposition of the preceding special protective measure passed and the special protective measure was not applied to such goods more than twice within five years, preceding the date of imposition of new special protective measure.

### **Chapter 3. ANTIDUMPING MEASURES**

#### **Article 12. General principles of applying antidumping measure**

1. The antidumping measure shall be applied to the goods being a subject of dumping import in case if on the basis of results of investigation carried out by a body carrying out investigations, it is established that the import of such goods to the customs territory of the Eurasian Economic Union inflicts material damage to the branch of economy of the member-states, creates a threat of inflicting such damage or substantively delays creation of the branch of economy of the member-states.

2. The goods are the subject of dumping import, if the export price of such goods is lower than its normal value.

3. The period of investigation for which the details are analyzed for the purpose of determination of existence of dumping import shall be established by a body carrying out investigations.

By this, as a rule, such period shall be established equally to twelve months preceding the date of filing an application on carrying out investigation over which there are statistics, but anyway this period shall not be less than six months.

### **Article 13. Determination of a dumping margin**

1. Dumping margin shall be determined by a body carrying out investigations on the basis of comparison of:

- 1) average weighted normal value of goods with average weighted export price of goods;
- 2) normal value of goods on individual transactions with export prices of goods on individual transactions;
- 3) average weighted normal value of goods with export prices of goods on individual transactions in condition of substantial differences in price of the goods depending on customers, regions or period of goods delivery.

2. Comparison of export price of goods with their normal value shall be carried out at one and the same stage of a trade operation and in respect of the cases of selling goods that took place at the same time as far as possible.

3. Upon comparison of export price of goods with their normal value, their adjustment shall be carried out in consideration with differences having an impact on comparability of prices, including the differences of conditions and characteristics of deliveries, tax assessment, stages of trade operations, quantitative indices, physical specifications, as well as any other differences in respect of which the evidences of their impact on comparability of prices are provided.

The body carrying out investigations shall be assured that adjustments in consideration with mentioned differences do not duplicate each other and do not distort a result of comparing export price with normal value of goods in such a manner. The body carrying out investigations shall have the right to request information from interested persons required for ensuring proper comparison of export price of goods with their normal value.

4. In case if there are no buy and sale transactions of analogous goods upon ordinary course of trade at the market of exporting third country or due to low sales volume of analogous goods upon ordinary course of trade or in virtue of the special situation at the market of exporting third country, it is impossible to conduct proper comparison of export price of goods with a price of analogous goods upon selling at the market of exporting third country, the export price of goods shall be compared with comparable price of analogous goods imported from the exporting third country to another third country (in condition that the price of analogous goods is representative), or with manufacturing costs of goods in their country of origin in consideration of necessary administrative, trade and general costs and income.

5. In case if the goods are imported to the customs territory of the Eurasian Economic Union from the third country that is not a country of their origin, the export price of such goods shall be compared with comparable price of analogous goods at the market of a third country. The export price of goods may be compared with comparable price of analogous goods in the country of their origin, if these goods are only transshipped through the third country from which they are exported to the customs territory of the Eurasian Economic Union, if their production is not carried out in this third country, or there is no comparable price of analogous goods.

6. In case if upon comparison of the export price of goods with their normal value the recalculation of their sizes from one currency to another is required, this recalculation shall be performed with use of official currency rate on a date of selling goods.

In case if sale of foreign currency was directly linked with the relevant export delivery of goods and was carried out for future delivery, the currency rate applied upon selling currency for future delivery shall be used. The body carrying out investigations shall not consider a currency fluctuation and in the course of investigation shall provide no less than sixty calendar days for adjustment of their export prices in consideration of stable changes of currency rates during the investigation.

7. Generally, the body carrying out investigations shall determine individual dumping margin for each well-known exporter and (or) manufacturer of goods that represented necessary details that provides determination of individual dumping margin.

8. In case if the body carrying out investigations comes to conclusion on inadmissibility of determining individual dumping margin for each well-known exporter and (or) manufacturer of goods by the reason of total number of exporters, manufacturers or importers of goods, variety of goods or by any other reason, it may use restriction of determining the individual dumping margin proceeding from reasonable number of interested persons, or determine a dumping margin in respect of picking of the goods from each exporting third country that according to information being at disposal of the body carrying out investigations is statistically representative and may be researched without violation of the course of investigation.

Selection of interested persons for the purpose of restricting determination of an individual dumping margin shall be carried out by the body carrying out investigations preferentially on the basis of consultations with the relevant foreign exporters, manufacturers and importers of goods being the objects of investigation and upon their agreement.

In case if the body carrying out investigations uses a restriction in accordance with this paragraph, it shall also determine an individual dumping margin in respect of each foreign exporter or foreign manufacturer that initially were not selected, but represented necessary details that enable determination of the individual dumping margin within the term established for their consideration, with the exception of cases when the number of foreign exporters and (or) foreign manufacturers is so big that the individual consideration may lead to violation of the term for carrying out of the relevant investigation by the body carrying out investigations.

Voluntarily presented answers of such foreign exporters and (or) foreign manufacturers shall not be denied by a body carrying out investigations.

9. In case if the body carrying out investigations uses restriction of determining an individual dumping margin in accordance with paragraph 8 of this Article, the size of the dumping margin calculated in respect of foreign exporters or foreign manufacturers of goods being the objects of dumping import not selected for determination of the individual dumping margin, but that represented necessary details in the course of investigation within the established term, shall not exceed the size of average weighted dumping margin determined in respect of foreign exporters or foreign manufacturers of goods selected for determination of the individual dumping margin of foreign exporters or foreign manufacturers of goods being the objects of dumping import.

10. If the exporters or manufacturers of goods being the objects of investigation do not present requested information to the body carrying out investigations in a required form and within established term, of the information presented by them may not be checked or does not conform to reality, the body carrying out investigations may determine a dumping margin on the basis of another available information being at its disposal.

11. Besides determination of an individual dumping margin for each well-known exporter and (or) manufacturer of goods that presented necessary details enabling determination of the individual dumping margin, the body carrying out investigations may determine a single dumping margin for all other exporters and (or) manufacturers of goods being the objects of investigation, on the basis of the highest dumping margin determined in the course of investigation.

#### **Article 14. Determination of normal value of goods**

1. Normal value of goods shall be determined by a body carrying out investigations on the basis of the prices of analogous goods upon their selling during the period of investigation at internal market of exporting third country upon ordinary course of trade to customers that are

not connected persons with manufacturers and exporters being residents of this third country for use in the customs territory of exporting third country.

For the purpose of determination of a normal value, the prices of analogous goods upon their selling to the customers at internal market of exporting third country, being connected persons with manufacturers and exporters that are the residents of this third country, may be considered, in case if it is established that the mentioned connection does not have an impact on a pricing policy of the foreign manufacturer and (or) exporter.

2. Sales volume of analogous goods upon ordinary course of trade at internal market of exporting third country shall be considered as sufficient for determination of a normal value of goods, if this volume is no less than five percent of total export volume to the customs territory of the Eurasian Economic Union from the exporting third country.

The lower sales volume of analogous goods upon ordinary course of trade shall be considered acceptable for determination of a normal value of goods, if there are evidences that such volume is sufficient for ensuring proper comparison of export price of goods with the price of analogous goods upon ordinary course of trade.

3. Upon determination of a normal value of goods in accordance with paragraph 1 of this Article, the price of goods upon their selling to customers at internal market of exporting third country is the average weighted price at which the analogous goods were sold to the customers within the period of investigation, or the price of goods on their each separate sale to the customers within this period.

4. Sale of analogous goods at internal market of exporting third country or from the exporting third country to another third country at the prices below production cost of a unit of analogous goods in consideration of administrative, trade and total costs may be disregarded upon determination of a normal value of goods only in case, if the body carrying out investigations establishes that the sale is carried out during the period of investigation in a considerable volume and at the prices that do not ensure reimbursement of all the costs for this period.

5. In case if the price of analogous goods that at the moment of their selling are below the production cost of a unit of analogous goods in consideration of administrative, trade and total costs exceeds the average weighted production cost of the unit of goods in consideration of administrative, trade and total costs during the period of investigation, such price shall be considered as ensuring reimbursement of all the costs within the period of investigation.

6. Sale of analogous goods at the prices that below the production cost of a unit of analogous goods in consideration of administrative, trade and total costs shall be considered as carried out in a significant volume in the case if the average weighted price of analogous goods on transactions considered upon determination of a normal value of goods is lower than the average weighted production cost of the unit of analogous goods in consideration of

administrative, trade and total costs or the sales volume at the prices below such production cost is no less than twenty percent of the sales volume on transactions considered upon determination of the normal value of goods.

7. The production cost of a unit of analogous goods in consideration of administrative, trade and total costs shall be calculated on the basis of data represented by an exporter or producer of the goods, in condition that such data conforms to generally accepted principles and rules of accounting and reporting in exporting third country and fully reflects the costs linked with production and sale of the goods.

8. The body carrying out investigations shall consider all available evidences at his (her) disposal on accuracy of distributing the costs of production, administrative, trade and total costs including data represented by an exporter or producer of the goods being the objects of investigation, in condition that such distribution of costs is usually in practice of this exporter or producer of goods, particularly in respect of establishment of the relevant period of depreciation, allowances for capital expenditures and coverage of other costs for production development.

9. Production costs, administrative, trade and total costs shall be adjusted in consideration of onetime costs linked with production development, or circumstances upon which the costs during the period of investigation are influenced by operations carried out during the period of organization of production. Such adjustments shall reflect the costs at the end of the period of organizing production, and in case if the period of organizing production exceeds the period of investigation – for the latest stage of organizing production accounted for the period of carrying out the investigation.

10. Overall quantitative indices of administrative, trade and total costs and income typical for this branch of economy shall be determined on the basis of actual data on production and sale of analogous goods upon ordinary course of trade represented by an exporter or producer of goods being the objects of the dumping import.

If it is impossible to determine such overall quantitative indices by mentioned method, they may be determined on the basis of:

1) actual sums received and disbursed by an exporter or producer of goods being the objects of investigation due to production and sales of the same category of goods at internal market of exporting third country;

2) average weighted actual sums received and disbursed due to production and sales of analogous goods at internal market of exporting third country by other exporters or producers of such goods;

3) other method in condition that the sum determined by this method does not exceed the income regularly received by other exporters or producers of the same category of goods upon their selling at internal market of exporting third country.

11. In case of dumping import from exporting third country in which the prices at internal market are regulated directly by the state or there is a state monopoly of external trade, the



normal value of goods may be determined on the basis of the price or calculation cost of analogous goods in appropriate third country (compared for the purpose of investigation with mentioned exporting country) or the price of analogous goods upon their delivery from this third country for export. In case if determination of a normal value of goods in accordance with this paragraph is impossible, the normal value of goods may be determined on the basis of a price paid or subjected to payment for analogous goods in the customs territory of the Eurasian Economic Union and adjusted in consideration of the profit.

#### **Article 15. Determination of export price of goods**

1. Export price of goods shall be determined on the basis of data on their selling during the period of investigation.

2. In the absence of data on export price of goods being the objects of dumping import or if there are substantiated doubts of a body carrying out investigations in credibility of details on export price of goods due to that the exporter and importer of goods are connected persons (as well as due to connection of each of them with a third person), or in existence of a restrictive business practice in the form of a conspiracy in respect of the export price of such goods, their export price may be calculated on the basis of the price at which the imported goods is resold to an independent customer for the first time, or by other method that may be determined by the body carrying out investigations, if the imported goods are not resold to the independent customer or are not resold in the form in which they were imported to the customs territory of the Eurasian Economic Union. By this, for the purpose of comparison of export price of goods with their normal value, the expenditures shall be also considered (including customs duties and taxes) paid during the period between the import and resale of goods, as well as income.

#### **Article 16. Establishment of material damage to the branch of economy of the member-states, threat of infliction of such damage or substantial delay of creating the branch of economy of the member-states due to dumping import**

1. Material damage to the branch of economy of the member-states, threat of infliction of such damage or substantial delay of creating the branch of economy of the member-states due to dumping import shall be established on the basis of the results of analyzing volumes of dumping import to the prices of analogous goods at market of the member-states and to producers of analogous goods in the member-states.

2. The period of investigation for which the details are analyzed for the purpose of determination of existence of material damage to the branch of economy of the member-states, threat of infliction of such damage or substantial delay of creating the branch of economy of the member-states due to dumping import, shall be established by the body carrying out investigations.

3. Upon analyzing a volume of dumping import, the body carrying out investigations shall determine if there is substantial increase of the dumping import of goods being the objects of investigation (in absolute measures or in respect of production or consumption of analogous goods in the member-states).

4. Upon analyzing impact of the dumping import on prices of analogous goods at market of the member-states, the body carrying out investigations shall establish:

1) if the prices of goods being the objects of the dumping import were significantly lower than the prices of analogous goods at market of the member-states;

2) did the dumping import led to significant decrease of prices of analogous goods at market of the member-states;

3) did the dumping import hampered significantly price increase of analogous goods at market of the member-states that would take place in case of absence of such import.

5. In case if the object of several investigations carried out at the same time is import of goods to the customs territory of the Eurasian Economic Union from more than one of exporting third country, the body carrying out investigations may assess joint impact of such import only in the case if establishes the following:

1) dumping margin determined in respect of import of goods being the objects of investigation from each exporting third country exceeds the minimum allowed dumping margin, and import volume of these goods from each exporting third country is not insignificant in consideration of provisions of paragraph 2 of Article 34 of this Law;

2) assessment of joint impact of import of goods is possible in consideration of competitive conditions between imported goods and analogous goods produced in the member-states.

6. Analysis of impact of the dumping import to the branch of economy of the member-states consist in assessment of all economic factors having relation to the status of the branch of economy of the member-states, including:

1) recovery level of economic status of the branch of economy of the member-states after impact of a dumping or subsidized import on it occurred previously;

2) happened or possible in future reduction in production, sales of goods, their share at market of the member-states, profit, efficiency, incomes from attracted investments or use of production capacities;

3) factors having an impact on prices of goods at a market of the member-states;

4) size of a dumping margin;

5) happened or possible in future negative impact on rate of production growth of goods, stock of goods, level of employment, salary, possibility of attracting investments and financial status.

By this neither one nor several factors may not have a crucial significance for establishing material damage to the branch of economy of the member-states, threats of inflicting such

damage or substantial delay of creating the branch of economy of the member-states due to dumping import.

7. Conclusion on existence of cause and effect relationship between dumping import and material damage of the branch of economy of the member-states, threat of infliction of such damage or substantial delay of creating the branch of economy of the member-states shall be based on analysis of all the evidences and details related to the case and being at disposal of the body carrying out investigations.

8. The body carrying out investigations shall also analyze the other well-known factors besides the dumping import, due to which in the same period the material damage is inflicted to the branch of economy of the member-states, a threat of inflicting such damage is created or creation of the branch of economy of the member states is delayed substantially.

Factors that may be considered as related to the case shall include particularly the volume and prices of imported goods not sold at dumping prices, diminution in demand or change in a structure of consumption, restrictive trade practice, technological achievements, as well as export indices and productivity of the branch of economy of the member-states.

The damage inflicted due to these factors to the branch of economy of the member-states shall not be related to material damage to the branch of economy of the member-states, threat of inflicting such damage or substantial delay of creating the branch of economy of the member states due to dumping import to the customs territory of the Eurasian Economic Union.

9. Impact of the dumping import to the branch of economy of the member-states shall be assessed as applied to production of analogous goods in the member-states, if available data enables allocating the production of analogous goods on the basis of such criteria as productive process, sale of analogous goods to their producers and profit.

In case if available data does not enable allocating the production of analogous goods, the impact of the dumping import to the branch of economy of the member-states shall be assessed as applied to the production of the most narrowly focused group or nomenclature of goods that include the analogous goods and on which the necessary data is available.

10. Upon establishment of a threat of inflicting material damage to the branch of economy of the member-states due to dumping import, the body carrying out investigations shall consider all available factors, including the following:

1) growth rates of dumping import indicating a real possibility of the following increase of such import;

2) availability of goods of an exporter being the objects of dumping import, sufficient export capacities or obvious unavailability of their increase that indicate a real possibility of increasing the dumping import of these goods, in consideration of capability of other export markets to accept any additional export of such goods;

3) level of prices of goods being the objects of investigation, if such level of prices may lead to reduction or control of the price of analogous goods at market of the member-states and the following growth in demand of goods being the objects of investigation;

4) availability of stock of goods of an exporter being the objects of investigation.

11. The decision on existence of a threat of inflicting material damage to the branch of economy of the member-states shall be adopted in the case, if in the course of investigation following the results of analyzing the factors mentioned in paragraph 10 of this Article, the body carrying out investigations came to conclusion on unavoidability of continuation of the dumping import and infliction of material damage in such a way to the branch of economy of the member-states in case of failure to take the antidumping measure.

### **Article 17. Imposition of preliminary antidumping duty**

1. In case if information received by a body carrying out investigations gives evidences of existence of the dumping import and damage to the branch of economy of the member-states conditioned by this before completion of the investigation on the basis of the report of the body carrying out investigations containing preliminary conclusion, the decision on applying antidumping measure through imposition of the preliminary antidumping duty shall be adopted.

2. Before adoption of a decision by the Commission on imposition of a preliminary antidumping duty, the authorized body shall coordinate a proposal with interested state bodies of the Republic of Kazakhstan on imposition of the preliminary antidumping duty prepared by a body carrying out investigation, on the basis of the preliminary conclusion.

3. Preliminary antidumping duty may not be imposed previously than after sixty calendar days from the date of beginning of investigation.

4. Rate of preliminary antidumping duty shall be sufficient for elimination of the damage to the branch of economy of the member-states, but not higher than the size of preliminarily calculated dumping margin.

5. In case if the rate of preliminary antidumping duty is equal to the size of preliminarily calculated dumping margin, the validity term of the preliminary antidumping duty shall not exceed four months, with the exception of a case if this term is extended up to six months on the basis of the request of exporters, the share of which in a volume of dumping import of goods being the objects of investigation is the most part.

6. In case if the rate of preliminary antidumping duty is less than preliminarily calculated antidumping margin, the validity term of antidumping duty shall not exceed six months, with the exception of a case if this term is extended up to nine months on the basis of a request of exporters, the share of which in a volume of dumping import of goods being the objects of investigation is the most part.

7. In case if on the basis of results of investigation it is established by a body carrying out investigations that there are no grounds for imposition of antidumping measure, or the

decision on non-applying the antidumping measure is adopted in accordance with Article 42 of this Law, the sums of preliminary antidumping duty shall be subject to return to a payer in accordance with the Laws of the Republic of Kazakhstan.

8. In case if on the basis of results of investigation the decision on applying antidumping measure is adopted on the basis of existence of a threat of inflicting material damage to the branch of economy of the member-states or substantial delay of creating the branch of economy of the member-states, the sums of preliminary antidumping duty shall be subject to return to a payer in accordance with Article 6 of this Law.

9. In case if on the basis of results of investigation, the decision on applying antidumping measure is adopted on the basis of existence of material damage to the branch of economy of the member-states or threat of its infliction (in condition that failure to impose preliminary antidumping duty would lead to determination of existence of material damage to the branch of economy of the member-states), the sums of preliminary antidumping duty shall be subject to admission and distribution from the date of entering of the decision on applying antidumping measure into force in accordance with Article 6 of this Law considering the provisions of paragraphs 10 and 11 of this Article.

10. In case if on the basis of results of investigation it is recognized efficient to impose a lower rate of antidumping duty than the rate of preliminary antidumping duty, the sums of preliminary antidumping duty corresponding to the sum of antidumping duty calculated according to the established rate of antidumping duty shall be subject to admission and distribution in accordance with Article 6 of this Law.

The sums of preliminary antidumping duty exceeding the sum of antidumping duty calculated according to established rate of antidumping duty shall be subject to return to a payer in accordance with the Laws of the Republic of Kazakhstan.

11. In case if on the basis of results of investigation it is recognized efficient to impose a higher rate of antidumping duty than the rate of preliminary antidumping duty, the difference between the sums of antidumping duty and preliminary antidumping duty shall not be recovered.

12. The preliminary antidumping duty shall be applied in condition of simultaneous continuation of investigation.

13. The decision on imposition of preliminary antidumping duty shall be adopted as a rule no later than seven months from the date of beginning of investigation.

#### **Article 18. Acceptance of goods being the objects of investigation, price undertakings by an exporter**

1. The investigation shall be suspended or terminated by a body carrying out investigations without imposition of preliminary antidumping duty or antidumping duty upon acceptance of goods being the objects of investigation, price undertakings by it from an exporter in written form on price review of these goods or termination of their export to the

customs territory of the Eurasian Economic Union at the prices that are lower than their normal value (in existence of persons connected with the exporter in the member-states, the application of these persons on supporting these undertakings shall be necessary), if the body carrying out investigations comes to conclusion that the acceptance of mentioned undertakings will eliminate the damage inflicted by dumping import, and the decision on their approval will be adopted.

According to these undertakings, the price level of goods shall be no higher that it is necessary for elimination of the dumping margin.

Price increase of goods may be less than a dumping margin, if such increase is efficient for elimination of damage to the branch of economy of the member-states.

2. The decision on approval of price undertakings shall not be adopted until the body carrying out investigations comes to preliminary conclusion on existence of the dumping import and damage to the branch of economy of the member-states conditioned by this.

3. Before adoption of a decision by the Commission on approval of price undertakings, the authorized body shall coordinate a proposal with the interested state bodies of the Republic of Kazakhstan on approval of the price undertakings mentioned in paragraph 1 of this article prepared by the body carrying out investigation, on the basis of a preliminary conclusion.

4. The decision on approval of price undertakings shall not be adopted if the body carrying out investigations comes to conclusion on inacceptability of their approval due to large number of real or potential exporters of goods being the objects of investigation, or by other reasons.

As far as possible, the body carrying out investigations shall inform exporters on the reasons by which the approval of their price undertakings was considered unacceptable, and provide them with the opportunity to make comments in this regard.

The body carrying out investigations shall direct a request to each exporter that accepted price undertakings on representation of their non-confidential version in order to have a possibility of its representation to interested persons.

5. The body carrying out investigations may make a proposal to exporters to accept price undertakings, but may not require their acceptance.

6. In case of adoption of a decision on approval of price undertakings, the antidumping investigation may be continued upon request of an exporter of goods or by decision of a body carrying out investigations. If on the basis of results of investigation, the body carrying out investigations comes to conclusion on the absence of the dumping import or damage to the branch of economy of the member-states conditioned by this, the exporter that accepted price undertakings shall be released from such undertakings, with the exception of a case when the mentioned conclusion is considerably the result of existence of such undertakings. In case if

the made conclusion is considerably a result of existence of price undertakings, the decision that such undertakings should remain in force within necessary period of time shall be adopted in consideration with provisions of paragraph 2 of Article 20 of this Law.

7. In case if on the basis of results of investigation, the body carrying out investigations comes to conclusion on existence of the dumping import and damage to the branch of economy of the member-states conditioned by it, the price undertakings accepted by an exporter shall be in effect in accordance with their conditions and provisions of this Law.

8. The body carrying out investigations shall have the right to request details from an exporter the price undertakings of whom were approved, regarding their performance, as well as agreement for checking these details.

Failure to represent requested details within term established by the body carrying out investigations, as well as disagreement of checking these details shall be considered as violation of accepted price undertakings by the exporter.

9. In cases of violation or revocation of price undertakings, the decision on applying antidumping measure through imposition of preliminary antidumping duty (if the investigation is not completed) or antidumping duty (if the final results of investigation give evidences of existence of the grounds for its imposition), shall be adopted.

In case of violation of the price undertakings accepted by the exporter, he (she) shall be provided with the opportunity to make a comment in regard of such violation.

10. The rate of a preliminary antidumping duty or antidumping duty that may be imposed in accordance with paragraph 9 of this Article shall be determined in a decision on approval of the price undertakings.

## **Article 19. Imposition and application of antidumping duty**

1. Antidumping duty shall be applied in respect of goods that are delivered by all exporters and that are the object of dumping import inflicting damage to the branch of economy of the member-states, with the exception of goods delivered by the same exporters, the price undertakings of which were approved in accordance with Article 18 of this Law.

2. Before adoption of a decision by the Commission on imposition of antidumping duty, the authorized body shall coordinate a proposal with the interested state bodies of the Republic of Kazakhstan on imposition of the antidumping duty, prepared by a body carrying out investigations.

3. The size of antidumping duty shall be efficient for elimination of damage to the branch of economy of the member states, but no higher than the size of calculated dumping margin.

The Commission may adopt a decision on imposition of antidumping duty in less size than the size of calculated dumping margin, if such size is efficient for elimination of damage to the branch of economy of the member-states.

4. Individual rate size of antidumping duty shall be established in respect of goods delivered by each exporter or producer of goods being the objects of dumping import for which the individual dumping margin was calculated.

5. Besides the individual rate size of antidumping duty mentioned in paragraph 4 of this Article, the uniform rate of antidumping duty on goods delivered by all other exporters or producers of goods from exporting third country shall be established, for which the individual dumping margin was not calculated, on the basis of the highest dumping margin calculated in the course of investigation.

6. Antidumping duty may be applied in respect of goods placed under the customs procedures, the conditions for placing of which are the payment of antidumping duties, not earlier than ninety calendar days until the date of imposition of preliminary antidumping duty, if on the basis of results of investigation by a body carrying out investigations, in respect of these goods the following is established simultaneously:

1) previously there was dumping import that inflicted damage, or the importer knew that the exporter delivers the goods at the price lower than their normal value and that such import of goods may inflict damage to the branch of economy if the member-states;

2) damage to the branch of economy of the member-states is inflicted substantially by increased dumping import within relatively short period of time that in consideration of duration and volumes, as well as other circumstances (including rapid growth of the stock resources of imported goods) may decrease significantly the restorative effect from imposition of antidumping duty in condition that the importers of such goods are provided by an opportunity to make comments before completion of the investigation.

7. After the date of beginning of investigation, the body carrying out investigations shall place a notification to the web-site of the Eurasian Economic Union, containing a caution on a possible application of antidumping duty in respect of goods being the objects of investigations in accordance with paragraph 6 of this Article.

Decision on placing such notification shall be adopted by a body carrying out investigations upon request of the branch of economy of the member-states containing sufficient evidences of performing the conditions mentioned in paragraph 6 of this Article, or at own initiative upon availability of such evidences being at disposal of the body carrying out investigations.

Antidumping duty may not be applied in respect of goods placed under the customs procedures, the conditions for placing of which are payment of antidumping duties until the date of placing the notification mentioned in this paragraph.

## **Article 20. Validity term and review of antidumping measure**

1. Antidumping measure shall be applied in amount and within the term that are necessary for elimination of damage to the branch of economy of the member-states due to dumping import.



2. The validity term of antidumping measure shall not exceed five years from the date of beginning of applying such measure or completion of repeated investigation that was carried out due to changed circumstances and at the same time concerned the analysis of dumping import and damage to the branch of economy of the member-states caused by it or was carried out due to expiration of the validity term of antidumping measure.

3. Repeated investigation due to expiration of the validity term of antidumping measure may be carried out on the basis of an application in written form filed in accordance with provisions of Article 32 of this Law, or at own initiative of the body carrying out investigations.

Repeated investigation due to expiration of the validity term of antidumping measure shall be carried out upon availability of details in applications on a possibility of restoration or continuation of dumping import and infliction of damage to the branch of economy of the member-states upon termination of the effect of antidumping measure.

The application on carrying out of repeated investigation due to expiration of the validity term of antidumping measure shall be filed no later than six months upon expiration of the validity term of the antidumping measure.

Repeated investigation shall begin before expiration of the validity term of antidumping measure and completed within twelve months from the date of its beginning.

Before completion of the repeated investigation carried out in accordance with this paragraph, the decision on extension of antidumping measure shall be adopted. Within the term for which the application of the relevant antidumping measure is extended, in the manner established for recovery of preliminary antidumping duties, the antidumping duties shall be paid according to the rates of antidumping duties that were established due to application of antidumping measure, the validity term of which is extended due to carrying out of repeated investigation.

In case if on the basis of results of repeated investigation due to expiration of the validity term of antidumping measure, it is established by a body carrying out investigations that there are no grounds for application of the antidumping measure, or the decision on non-application of the antidumping measure is adopted in accordance with Article 42 of this Law, the sums of antidumping duty recovered in the manner established for recovery of preliminary antidumping duties within the term for which the application of the antidumping measure was extended, shall be subject to return to a payer in accordance with Article 6 of this Law.

The force of antidumping measure shall be extended in case if on the basis of results of the repeated investigation due to expiration of the validity term of the antidumping measure, the body carrying out investigations establishes a possibility to restore or continue the dumping import and inflict damage to the branch of economy of the member-states. From the date of entering of the decision on extension of the antidumping measure into force, the sums of antidumping duties recovered in the manner established for recovery of preliminary antidumping duties within the term for which the application of the antidumping measure was

extended, shall be subject to admission and distribution in accordance with Article 6 of this Law.

4. Upon application of an interested person in case if after imposition of the antidumping measure no less than one year is passed, or upon the initiative of a body carrying out investigations, the repeated investigation shall be carried out for the purpose of determination of a practicability of continuing the application of the antidumping measure and (or) its review (including review of individual rate size of antidumping duty) due to changed circumstances.

Depending on the purposes of filing the application on carrying out of repeated investigation, such application shall contain the evidences that due to changed circumstances:

1) the continuation of applying the antidumping measure shall not be required for counteraction to the dumping import and elimination of the damage to the branch of economy of the member-states due to dumping import;

2) the current size of the antidumping measure exceeds the size sufficient for counteracting the dumping import and elimination of damage to the branch of economy of the member states due to dumping import;

3) the current antidumping measure is insufficient for counteracting dumping import and elimination of damage to the branch of economy of the member-states due to the dumping import. Repeated investigation carried out in accordance with this paragraph shall be completed within twelve months from the date of its beginning.

5. Repeated investigation may be also carried out for the purpose of establishment of individual dumping margin for exporter or producer that did not carry out delivery of goods being the objects of dumping import during investigation.

Such repeated investigation may be started by a body carrying out investigations in case of filing an application by mentioned exporter or producer on its carrying out containing evidences that the exporter or producer of goods are not the persons connected with the exporters and producers in respect of whom the antidumping measure is applied, and that this exporter or producer carries out deliveries of the goods being the objects of investigation to the customs territory of the Eurasian Economic Union or is connected with contractual obligations on delivery of substantial volumes of such goods to the customs territory of the Eurasian Economic Union, termination or revocation of which will lead to significant losses or substantial penalty (fine, late fee), other fine sanctions for this exporter or producer of the goods.

During carrying out of repeated investigation for the purpose of establishment of individual dumping margin for exporter or producer, the antidumping measure in respect of deliveries of the goods being the objects of investigation to the customs territory of the Eurasian Economic Union, this exporter or producer shall not pay the antidumping duty until adoption of the decision on the basis of results of mentioned repeated investigation. By this, in respect of such goods imported (brought in) to the customs territory of the Eurasian

Economic Union in the period of carrying out of repeated investigation, the ensuring of paying the antidumping duty shall be provided in the manner provided by the Customs Code of the Eurasian Economic Union for ensuring the payment of import customs duties in consideration of special aspects established by this Paragraph..

Ensured payments of antidumping duty shall be provided by money in amount of a sum of antidumping duty calculated on the basis of a unified rate of antidumping duty established in accordance with Article 6 of this Law.

In case if on the basis of results of repeated investigation, the decision on applying antidumping measure is adopted, over the period of carrying out such repeated investigation, the antidumping duty shall be subject to payment. The sum of ensuring from the date of entering of the decision on applying the antidumping measure into force adopted on the basis of results of repeated investigation, shall be subject to offset on account of payment of the antidumping measure in amount determined proceeding from the established rate of antidumping duty, admission and distribution in accordance with Article 6 of this Law in consideration of provisions of this paragraph. In case if on the basis of results of repeated investigation it is recognized efficient to impose a higher rate of antidumping duty than the rate proceeding from which the amount of ensuring the payment of the antidumping duty was determined, the difference between the sums of the antidumping duty calculated according to the rate established on the basis of results of repeated investigation, and unified rate of the antidumping duty shall not be recovered.

Sum of ensuring exceeding the sum of antidumping duty calculated according to established rate of the antidumping duty shall be subject to return to a payer in accordance with Article 6 of this Law.

Repeated investigation provided by this paragraph shall be carried out in a possibly short term that may not exceed twelve months.

6. The provisions of chapter 5 of this Law regarding representation of evidences and carrying out of antidumping investigation shall be applied in respect of repeated investigations provided by paragraphs 1-7 of this Article in consideration of the relevant differences.

7. Provisions of paragraphs 1-6 of this Article shall be applied in respect of obligations accepted by an exporter in accordance with Article 18 of this Law, in consideration of the relevant differences.

**Footnote. Article 20 as amended by the Law of the Republic of Kazakhstan dated 26.12.2017 No. 124-VI (shall be enforced from 01.01.2018).**

## **Article 21. Establishment of evasion of antidumping measure**

1. The evasion of antidumping measure shall be regarded as the change of a method of goods delivery for avoidance of paying antidumping duty or performance of price undertakings accepted by an exporter.

2. Repeated investigation for the purpose of establishment of evasion of antidumping measure may begin upon application of an interested person or at own initiative of a body carrying out investigations.

3. Application mentioned in paragraph 2 of this Article shall contain the evidences of:

1) evasion of antidumping measure;

2) neutralizing the force of antidumping measure due to its evasion and impact of this factor on production and (or) sales volumes and (or) on the prices of analogous goods at market of the member-states;

3) existence of dumping import (component parts and (or) derivatives of such goods) in a result of evasion of antidumping measure. By this, the normal value of goods, their component parts or derivatives shall be regarded as their normal value determined in the course of investigation, on the basis of results of which the antidumping measure is imposed, in consideration of the relevant adjustments for the purpose of correlation.

4. Repeated investigation for the purpose of establishment of evasion of antidumping measure shall be completed within nine months from the date of its beginning.

5. For the period of repeated investigation carried out in accordance with this Article, the antidumping duty subjected to recovery on component parts and (or) derivatives of goods being the objects of dumping import imported to the customs territory of the Eurasian Economic Union from exporting third country may be imposed in the manner established for recovery of preliminary antidumping duties, as well as on goods being the objects of the dumping import, and (or) their component parts and (or) derivatives imported to the customs territory of the Eurasian Economic Union from another exporting third country.

6. In case if on the basis of results of repeated investigation carried out in accordance with this Article, the body carrying out investigations did not establish the evasion of antidumping measure, the sums of antidumping duty paid in accordance with this Article and in the manner established for recovery of preliminary antidumping duties, shall be subject to return to a payer in accordance with Article 6 of this Law.

7. In case of establishing evasion of antidumping measure on the basis of results of repeated investigation carried out in accordance with this Article, the antidumping measure may be applied to the component parts and (or) derivatives of goods being the objects of dumping import imported to the customs territory of the Eurasian Economic Union from exporting third country, as well as to the goods being the objects of the dumping import, and (or) their component parts and (or) derivatives imported to the customs territory of the Eurasian Economic Union from another exporting third country. From the date of entering of a decision on imposition of the antidumping measure mentioned in this paragraph into force, the sums of antidumping duties paid in the manner established for recovery of preliminary antidumping duties shall be subject to admission and distribution in accordance with Article 6 of this Law.

## **Chapter 4. COMPENSATION MEASURES**

### **Article 22. General principles of applying compensation measure**

Compensation measure may be applied to imported goods upon production, export or transportation of which the special subsidy of exporting third country is used, in case if on the basis of results of investigation carried out by a body carrying out investigations it is established that the import of such goods to the customs territory of the Eurasian Economic Union inflicts material damage to the branch of economy of the member-states, creates a threat of infliction of such damage or delays substantially the creation of the branch of economy of the member-states.

### **Article 23. Subsidies**

The subsidies shall include:

1) financial assistance carried out by subsidized body granting additional benefits to a receiver of subsidy and rendered within the territory of exporting third country, particularly in the form of:

direct money transfer (particularly in the form of grants, loan and purchase of shares) or obligations on money transfer (particularly in the form of loan guarantees);

writing off of funds or full or partial refusal from recovery of funds that should come to the revenue side of exporting third country (particularly through extension of tax credits), with the exception of cases of release of exported goods from taxes or duties recovered from the analogous goods designed for internal consumption, or with the exception of decrease or return of such taxes or duties in amounts not exceeding the actually paid sums;

beneficial or gratuitous provision of goods or services, with the exception of the goods or services designed for maintenance and development of common infrastructure, i.e. infrastructure not linked with a particular producer and (or) exporter;

beneficial acquisition of goods;

2) any form of supporting incomes or prices granting additional benefits subsidies to a receiver of subsidies, the direct or indirect result of which is growth in export of goods from exporting third country or decrease of import of analogous goods to this third country.

### **Article 24. Principles of referring subsidies of exporting third country to specific**

1. Subsidy of exporting third country is specific, if the subsidized body or legislation of exporting third country admit only individual organizations to use the subsidy including particular producer and (or) exporter or particular branch of economy of the exporting third country, or group (union, association) of producers and (or) exporters or branches of economy of the exporting third country.

Subsidy is specific if the number of individual organizations admitted to use this subsidy is restricted by the organizations located in particular geographical region being under jurisdiction of the subsidized body.

2. Subsidy is not specific, if the legislation of exporting third country or subsidized body established common objective standards or conditions that determine the vested right to receive subsidy and its amount (particularly depending on the number of employees occupied in manufacture of products, or volume of product release).

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

- 1) restriction of number of individual organizations admitted to use the subsidy;
- 2) the privileged use of subsidy by individual organizations;
- 3) provision of disproportionately large amounts of subsidies to individual organizations;
- 4) choice of a beneficial (preferential) method for granting the subsidy to individual organizations by a subsidized body.

4. Any subsidy of exporting third country is the specific subsidy, if:

1) the subsidy is linked with export of goods in accordance with the legislation of the exporting third country or actually as the only condition or one of several conditions. The subsidy shall be considered actually linked with export of goods, if its granting that is not linked with export of goods in accordance with the legislation of the exporting third country, is practically linked with the carried out or possible in future export of goods or with export earnings. The fact of granting the subsidy to exporting enterprises shall not mean the grant of subsidy linked with export of goods within the meaning of this paragraph;

2) the subsidy is linked with use of goods produced in exporting third country instead of imported goods in accordance with the legislation of the exporting third country or actually as the only condition or one of several conditions.

#### **Article 25. Principles of determination of amount of specific subsidy**

1. Amount of specific subsidy shall be determined on the basis of amount of a benefit derived by a receiver of such subsidy.

2. Amount of benefit derived by a receiver of specific subsidy shall be determined on the basis of the following principles:

1) participation of a subsidized body in a charter capital of organization shall not be considered as granting of the benefit, if such participation may not be regarded as not satisfying the normal investment practice (including granting of the risk capital) to the territories of exporting third country;

2) credit extended by a subsidized body shall not be considered as granting of the benefit, if there is no difference between the sum which the organization-receiver pays for the state

credit, and sum which it would pay for comparable commercial credit which this organization may receive at the credit market of exporting third country, otherwise, the benefit shall be considered as the difference between these sums;

3) guaranteeing of credit by a subsidized body shall not be considered as granting of the benefit, if there is no difference between the sum which the organization-receiver pays for the credit guaranteed by the subsidized body, and the sum which it would pay for comparable commercial credit without the state guarantee, otherwise the benefit shall be considered as the difference between these sums as adjusted for difference in commission charges;

4) delivery of goods or services by a subsidized body or procurement of goods shall not be considered as granting of the benefit, if only the goods or services are delivered for less than appropriate remuneration or procurements are not carried out for more than appropriate remuneration. The adequacy of remuneration shall be determined proceeding from the existing market conditions of purchase and sale of these goods and services at the market of exporting third country including price, quality, availability, liquidity, transportation and other conditions of procurement or sale of goods.

**Article 26. Establishment of material damage to the branch of economy of the member-states, threats of inflicting such damage or substantial delay of creating the branch of economy of the member-states due to subsidized import**

1. The material damage to the branch of economy of the member-states, threat of inflicting such damage or substantial delay of creating the branch of economy of the member-states due to subsidized import shall be established on the basis of results of analyzing the volumes of the subsidized import and impact of such import on the prices of analogous goods at market of the member-states and producers of analogous goods in the member-states.

2. The period of carrying out over which the details are analyzed for the purpose of determination of existence of material damage to the branch of economy of the member-states, threat of infliction of such damage or substantial delay of creating the branch of economy of the member-states due to the subsidized import shall be established by a body carrying out investigations.

3. Upon analyzing the volume of subsidized import, the body carrying out investigations shall determine if there is substantial increase of the subsidized import of goods being the objects of investigation (in absolute measures or in respect of production or consumption of analogous goods in the member-states).

4. In case if the object of investigations carried out at the same time is the subsidized import of any goods to the customs territory of the Eurasian Economic Union from more than one exporting third country, the body carrying out investigations may assess the joint impact of such import only in case if establishes the following:

1) amount of subsidy in each exporting third country for these goods is more than one percent of their cost, and volume of subsidized import from each exporting third country is not insignificant in accordance with paragraph 4 of Article 35 of this Law;

2) assessment of joint impact of the import of goods being the objects of subsidized import is possible in consideration of competitive conditions between imported goods and competitive conditions between imported goods and analogous goods produced in the member-states.

5. Upon analyzing the impact of subsidized import on the prices of analogous goods at market of the member-states, the body carrying out investigations shall establish:

1) if the prices of goods being the objects of subsidized import were significantly lower than the prices of analogous goods at market of the member-states;

2) if the subsidized import led to significant price lowering of analogous goods at market of the member-states;

3) if the subsidized import significantly impeded price increase of analogous goods at market of the member-states that would take a place in case of absence of such import.

6. Analysis of impact of the subsidized import on the branch of economy of the member-states consists in assessment of all the economic factors having relation to the state of the branch of economy of the member-states, including:

1) happened or possible in the nearest future reduction in production, sales of goods, market share of goods of the member-states, profit, productivity, incomes from attracted investments or use of production capacities;

2) factors having an impact on the prices of goods at market of the member-states;

3) happened or possible in future negative impact on movement of money flows, stock of goods, level of employment, salary, rate of increase in production and possibility of attracting investments.

7. Impact of the subsidized import on the branch of economy of the member-states shall be assessed as applied to production of analogous goods in the member-states, if available data of the analogous goods enables allocating the production of analogous goods on the basis of such criteria as productive process, sale of analogous goods to their producers and profit.

In case if available data does not enable allocating the production of analogous goods, the impact of the subsidized import on the branch of economy of the member-states shall be assessed as applied to the production of the most narrowly focused group or nomenclature of goods that include the analogous goods and on which the necessary data is available.

8. Upon establishment of a threat of inflicting material damage to the branch of economy of the member-states due to subsidized import, the body carrying out investigations shall consider all available factors, including the following:

1) character, amount of subsidy or subsidies and their probable impact on trade;

2) growth rates of the subsidized import indicating a real possibility of the following increase of such import;



3) availability of goods of an exporter being the objects of subsidized import, sufficient export capacities or obvious unavailability of their increase that indicate a real possibility of increasing the subsidized import of these goods, in consideration of capability of other export markets to accept any additional export of such goods;

4) level of prices of goods being the objects of subsidized import, if such level of prices may lead to reduction or control of the price of analogous goods at market of the member-states and the following growth in demand of goods being the objects of subsidized import;

5) availability of the stock of goods of an exporter being the objects of subsidized import.

9. The decision on existence of a threat of inflicting material damage to the branch of economy of the member-states shall be adopted in the case, if in the course of investigation following the results of analyzing the factors mentioned in paragraph 9 of this Article, the body carrying out investigations came to conclusion on unavailability of continuation of the subsidized import and infliction of material damage in such a way to the branch of economy of the member-states in case of failure to take the compensation measure.

10. Conclusion on existence of cause and effect relationship between the subsidized import and material damage of the branch of economy of the member-states, threat of infliction of such damage or substantial delay of creating the branch of economy of the member-states shall be based on analysis of all the evidences and details related to the case and being at disposal of the body carrying out investigations.

11. The body carrying out investigations shall also analyze the other well-known factors besides the subsidized import, due to which in the same period the material damage is inflicted to the branch of economy of the member-states, a threat of inflicting such damage is created or creation of the branch of economy of the member states is delayed substantially.

The damage inflicted due to these factors to the branch of economy of the member-states shall not be related to the damage to the branch of economy of the member-states due to subsidized import to the customs territory of the Eurasian Economic Union.

## **Article 27. Imposition of preliminary compensation duty**

1. In case if information received by a body carrying out investigations gives evidences of existence of subsidized import and damage to the branch of economy of the member-states conditioned by this import before completion of investigation, the Commission shall adopt decision on applying compensation measure through imposition of preliminary compensation duty for the term up to four months for the purpose of prevention of damage to the branch of economy of the member-states inflicted by the subsidized import during carrying out of investigation.

2. Before adoption of a decision by the Commission on imposition of a preliminary compensation duty, the authorized body shall coordinate a proposal with interested state

bodies of the Republic of Kazakhstan on imposition of the preliminary compensation duty prepared by a body carrying out investigation, on the basis of the preliminary conclusion.

3. Preliminary compensation duty may not be imposed previously than after sixty calendar days from the date of beginning of investigation.

4. Preliminary compensation duty shall be imposed in amount being equal to the preliminarily calculated amount of specific subsidy of exporting third country per unit of the subsidized and exported goods.

5. In case if on the basis of results of investigation it is established by a body carrying out investigations that there are no grounds for imposition of compensation measure, or the decision on non-applying the compensation measure is adopted in accordance with Article 42 of this Law, the sums of preliminary compensation duty shall be subject to return to a payer in accordance with the Laws of the Republic of Kazakhstan.

6. In case if on the basis of results of investigation the decision on applying compensation measure is adopted on the basis of existence of a threat of inflicting material damage to the branch of economy of the member-states or substantial delay of creating the branch of economy of the member-states, the sums of preliminary compensation duty shall be subject to return to a payer in accordance with Article 6 of this Law.

7. In case if on the basis of results of investigation, the decision on applying compensation measure is adopted on the basis of existence of material damage to the branch of economy of the member-states or threat of its infliction (in condition that failure to impose preliminary compensation duty would lead to determination of existence of material damage to the branch of economy of the member-states), the sums of preliminary compensation duty shall be subject to admission and distribution from the date of entering of the decision on applying compensation measure into force in accordance with Article 6 of this Law considering the provisions of paragraphs 8 and 9 of this Article.

8. In case if on the basis of results of investigation it is recognized efficient to impose a lower rate of compensation duty than the rate of preliminary compensation duty, the sums of preliminary compensation duty corresponding to the sum of compensation duty calculated according to the established rate of compensation duty shall be subject to admission and distribution in accordance with Article 6 of this Law.

The sums of preliminary compensation duty exceeding the sum of compensation duty calculated according to established rate of compensation duty shall be subject to return to a payer in accordance with the Laws of the Republic of Kazakhstan.

9. In case if on the basis of results of investigation it is recognized efficient to impose a higher rate of compensation duty than the rate of preliminary compensation duty, the difference between the sums of compensation duty and preliminary compensation duty shall not be recovered.

10. Preliminary compensation duty shall be applied in condition of simultaneous continuation of investigation.

11. The decision on imposition of preliminary compensation duty shall be adopted as a rule no later than seven months from the date of beginning of investigation.

**Article 28. Acceptance of voluntary obligations of subsidizing third country or exporter of goods being the object of investigation**

1. Investigation may be suspended or terminated without imposition of compensation duty upon adoption of a decision by the Commission on approval of one of the following voluntary obligations (in written form) received by a body carrying out investigations:

1) exporting third country is agreed to cancel or reduce subsidizing or to take the relevant measures for the purpose of elimination of consequences of the subsidizing;

2) the exporter of goods being the object of investigation is agreed to review the prices for such goods set by him (her) (in existence of persons linked with the exporter in the member-states – to ensure support of exporter's obligations by these persons on price review) in such a way that in a result of analyzing the obligations accepted by the exporter, the body carrying out investigations comes to conclusion that the acceptance of such voluntary obligations will eliminate damage to the branch of economy of the member-states.

According to such obligations, the price increase of goods being the objects of investigation shall not exceed the amount of specific subsidy of exporting third country calculated in respect of a unit of subsidized and exported goods.

Price increase of goods being the objects of investigation may be lower than the amount of specific subsidy of exporting third country calculated per unit of the subsidized and exported goods, if such increase is sufficient for elimination of damage to the branch of economy of the member-states.

2. Before adoption of a decision by the Commission on approval of voluntary obligations, the authorized body shall coordinate a proposal with the interested state bodies of the Republic of Kazakhstan on approval of voluntary obligations mentioned in paragraph 1 of this Article prepared by a body carrying out investigations.

3. The decision on approval voluntary obligations shall not be adopted by the Commission until the body carrying out investigations comes to preliminary conclusion on existence of subsidized import and damage conditions by this to the branch of economy of the member-states.

The decision on approval of voluntary obligations of an exporter of goods being the objects of investigation shall not be adopted by the Commission until receipt of agreement of the authorized body of exporting third country to acceptance of obligations by exporters mentioned in subparagraph 2) of part one of paragraph 1 of this Article.

4. The decision on approval of voluntary obligations shall not be adopted by the Commission, if the body carrying out investigations comes to conclusion on inacceptability of their approval due to large number of real or potential exporters of goods being the objects of investigation, or by other reasons.

As far as possible, the body carrying out investigations shall inform exporters on the reasons by which the approval of their voluntary obligations was considered unacceptable, and provide them with the opportunity to make comments in this regard.

10. The body carrying out investigations shall direct a request to each exporter and to the authorized body of exporting third country that accepted voluntary obligations on representation of their non-confidential version in order to have a possibility of its representation to interested persons.

6. The body carrying out investigations may make a proposal to exporting third country or exporter of goods being the objects of investigation to accept the voluntary obligations, but may not require their acceptance.

7. In case of adoption of a decision by the Commission on approval of voluntary obligations, the compensation investigation may be extended upon request of exporting third country or according to decision of the body carrying out investigations.

In case if on the basis of results of investigation, the body carrying out investigations comes to conclusion on absence of the subsidized import or damage to the branch of economy of the member-states conditioned by this, the exporting third country or exporters that accepted voluntary obligations shall be released from such obligations, with the exception of a case when mentioned conclusion is considerably the result of existence of such obligations. In case if the made conclusion is considerably the result of existence of voluntary obligations, the decision that such obligations should remain in force within necessary period of time may be adopted by the Commission in consideration with provisions of paragraph 2 of Article 30 of this Law.

8. In case if on the basis of results of investigation, the body carrying out investigations comes to conclusion on existence of the subsidized import and damage to the branch of economy of the member-states conditioned by this, the voluntary obligations accepted shall be in effect in accordance with their conditions and provisions of this Law.

9. The body carrying out investigations shall have the right to request details from exporting third country or exporter, the voluntary obligations of which were approved by the Commission, regarding their performance, as well as agreement for checking these details.

Failure to represent requested details within term established by the body carrying out investigations, as well as disagreement of checking these details shall be considered as violation of accepted voluntary obligations by exporting third country or exporter.

10. In cases of violation of voluntary obligations by exporting third country or exporter or revocation of such obligations, the Commission may adopt a decision on applying the compensation measure through imposition of preliminary compensation duty (if the investigation is not completed) or compensation duty (if the final results of investigation give results of investigation indicate the existence of the grounds for its imposition).

In case of violation of the voluntary obligations accepted by the exporter, exporting third country, they shall be provided with the opportunity to make a comment in regard of such violation.

11. The rate of preliminary compensation duty or compensation duty that may be imposed in accordance with paragraph 10 of this Article shall be determined in a decision of the Commission on approval of the voluntary obligations.

## **Article 29. Introduction and application of compensation duty**

1. The decision on imposition of compensation duty shall not be adopted by the Commission if the specific subsidy of exporting third country was revoked.

2. Before adoption of the decision by the Commission on applying compensation duty, the authorized body shall coordinate a proposal with the interested state bodies of the Republic of Kazakhstan on imposition of the compensation duty prepared by the body carrying out investigations.

3. The decision on imposition of compensation duty shall be adopted after proposal to exporting third country providing specific subsidy to carry out the advisory services from which this country refused or in the course of their carrying out, the mutually acceptable decision was not reached.

4. The compensation duty shall be applied in respect of goods that is delivered by all the exporters and that is the subject of subsidized import inflicting damage to the branch of economy of the member-states (with the exception of goods delivered by those exporters the voluntary obligations of which were approved by the Commission).

In respect of goods delivered by separate exporters, the Commission may establish individual rate of compensation duty.

5. Rate of compensation duty shall not exceed the amount of specific subsidy of exporting third country calculated for a unit of the subsidized and exported goods.

In case if the subsidies are provided in accordance with different programs of subsidizing, their aggregate amount shall be considered.

Rate of compensation duty may be less than the amount of specific subsidy of exporting third country, if this rate is sufficient for elimination of the damage to the branch of economy of the member-states.

6. Upon determination of rate of compensation duty, the consumers' opinions of the member-states received by the body carrying out investigations in written form the interests of which may be affected by imposition of the compensation duty shall be considered.

7. Compensation duty may be applied in respect of goods placed under the customs procedures, the conditions for placing of which are the payment of compensation duty, not earlier than ninety calendar days until the date of imposition of preliminary compensation duty, if on the basis of results of investigation by a body carrying out investigations, in respect of these goods the following is established simultaneously:

1) damage that would be difficult to eliminate, is consequently inflicted by import of goods being significantly increased within the relatively short time period, in respect of which the specific subsidies are paid or provided;

2) it is necessary to apply compensation duty in respect of imported goods mentioned in subparagraph 1) of paragraph 7 of this Article for the purpose of preventing repetition of the damage.

8. After the date of beginning of an investigation, the body carrying out investigations shall place a notification on the web-site of the Eurasian Economic Union containing prevention on potential application of the compensation duty in accordance with paragraph 7 of this Article in respect of goods being the object of investigation.

The decision on placement of such notification shall be adopted by the body carrying out investigations upon request of the branch of economy of the member-states containing sufficient evidences of performing the conditions mentioned in paragraph 7 of this Article, or at own initiative in existence of the evidences at disposal of the body carrying out investigations.

Compensation duty may not be applied in respect of goods placed under the customs procedures, the condition for placing under which is the payment of compensation duty until the date of placement of the notification mentioned in this Article.

### **Article 30. Validity term and review of compensation measure**

1. Compensation measure shall be applied under decision of the Commission in amount and within the term being necessary for elimination of damage of the branch of economy of the member-states owing to subsidized import.

2. Validity term of compensation measure shall not exceed five years from the date of beginning of applying such measure or completion of the repeated investigation that was carried out owing to changed circumstances and concerned the analysis of subsidized import and the damage to the branch of economy of the member-states caused by it at the same time, or validity term expiration of the compensation measure.

3. Owing to validity term expiration of compensation measure, the repeated investigation shall be carried out on the basis of application (in written) filed in accordance with Article 32 of this Law, or at own initiative of the body carrying out investigations.

Owing to validity term expiration of the compensation measure, the repeated investigation shall be carried out in existence of details in the application on a possibility to renew or resume subsidized import and inflict damage to the branch of economy of the member-states upon termination of validity of the compensation measure.

The application on carrying out repeated investigation owing to validity term expiration of the compensation measure shall be filed no later than six months before the validity term expiration of the compensation measure.

Repeated investigation shall begin before validity term expiration of the compensation measure and completed within twelve months from the date of its beginning.

Before completion of repeated investigation carried out in accordance with provisions of this paragraph, the application of compensation measure shall be extended under decision of the Commission. Within the term for which the application of the relevant compensation measure is extended in the manner established for recovery of preliminary compensation duties, the compensation duties shall be paid at the rates of compensation duties being established owing to application of the compensation measure, the validity term of which is extended owing to carrying out of the repeated investigation.

In case if based on results of repeated investigation owing to validity term expiration of the compensation measure, the body carrying out investigations established that there are no grounds for application of the compensation measure, or the decision on non-applying the compensation measure is adopted in accordance with Article 42 of this Law, the sums of compensation duty recovered in the manner established for recovery of preliminary compensation duties within the term for which the application of compensation measure was extended, shall be subject to return to a payer in accordance with the Laws of the Republic of Kazakhstan.

The validity term of compensation measure shall be extended by the Commission in case if based on results of repeated investigation owing to validity term expiration of the compensation measure, the body carrying out investigations will establish a possibility to renew or resume the subsidized import and to inflict damage to the branch of economy of the member-states. From the date of entering of a decision of the Commission into force on extension of compensation measure, the sums of compensation duties recovered in the manner established for recovery of preliminary compensation duties within the term for which the application of compensation measure was extended, shall be subject to admission and distribution in accordance with Article 6 of this Law.

4. Upon application of an interested person, in case if after entering of the compensation measure into force no less than one year is passed, or at the initiative of a body carrying out investigation, the repeated investigation may be carried out for the purpose of determination of a practicability of continuing the application of the compensation measure and (or) its review (including review of an individual rate of compensation duty) owing to changed circumstances.

Depending on the purposes of filing application on carrying out repeated investigation owing to changed circumstances, such application shall contain the evidences that:

1) continuation of applying compensation measure shall not be required for counteraction to subsidized import and elimination of damage to the branch of economy of the member-states due to subsidized import; current amount of compensation measure exceeds the amount sufficient for counteraction to subsidized import and elimination of damage to the branch of economy of the member-states owing to subsidized import;

2) existed compensation measure is insufficient for counteraction to the subsidized import and elimination of damage to the branch of economy of the member-states owing to subsidized import.

Repeated investigation due to changed circumstances shall be completed within twelve months from the date of its beginning.

5. Provisions of chapter 5 of this Law concerning the representation of evidences and carrying out of investigation shall apply in respect of repeated investigations provided by this Article considering the relevant differences.

6. Provisions of this Article shall apply in respect of circumstances accepted by exporting third country of exporter in accordance with Article 28 of this Law, considering the relevant differences.

7. Repeated investigation may be also carried out for the purpose of establishment of an individual rate of compensation duty for an exporter, in respect of whom the compensation measure is applied, but the investigation by other reasons than refusal from cooperation was not carried out. Such repeated investigation may begin by a body carrying out investigations upon application of mentioned exporter.

### **Article 31. Establishment of evasion of compensation measure**

1. 1. The evasion of compensation measure shall be regarded as the change of a method of goods delivery for avoidance of paying compensation duty or performance of accepted voluntary undertakings.

2. Repeated investigation for the purpose of establishment of evasion of compensation measure may begin upon application of an interested person or at own initiative of a body carrying out investigations.

3. Application mentioned in paragraph 2 of this Article shall contain the evidences of:

1) evasion of compensation measure;

2) neutralizing the force of compensation measure (due to its evasion) on production and (or) sales volumes, and (or) on the prices of analogous goods at the market of the member-states;

3) preservation of profit from provision of specific subsidies from a producer and (or) exporter of goods (component parts and (or) derivatives of such goods).

4. For the purpose of repeated investigation carried out in accordance with this Article, the Commission may impose the compensation duty recovered in the manner established for recovery of preliminary compensation duties, on component parts and (or) derivatives of the goods being the objects of subsidized import imported to the customs territory of the Eurasian Economic Union from exporting third country, as well as on the goods being the objects of subsidized import, and (or) their component parts and (or) derivatives imported to the customs territory of the Eurasian Economic Union from another exporting third country.



5. In case if on the basis of results of repeated investigation carried out in accordance with this Article, the body carrying out investigations did not establish the evasion of compensation measure, the sums of compensation duty paid in accordance with this Article and in the manner established for recovery of preliminary compensation duties, shall be subject to return to a payer in accordance with the Laws of the Republic of Kazakhstan.

6. In case of establishing evasion of compensation measure on the basis of results of repeated investigation carried out in accordance with this Article, the compensation measure may be applied to the component parts and (or) derivatives of goods being the objects of subsidized import imported to the customs territory of the Eurasian Economic Union from exporting third country, as well as to the goods being the objects of the subsidized import, and (or) their component parts and (or) derivatives imported to the customs territory of the Eurasian Economic Union from another exporting third country. From the date of entering of a decision of the Commission on imposition of the compensation measure mentioned in this paragraph into force, the sums of paid compensation duties shall be subject to admission and distribution in accordance with Article 6 of this Law.

7. Repeated investigation for the purpose of establishment of evasion of compensation measure shall be completed within nine months from the date of its beginning.

## **Chapter 5. CARRYING OUT INVESTIGATIONS**

### **Article 32. Grounds for carrying out of investigations**

1. Investigation for the purpose of establishment of existence of increased import and serious damage to the branch of economy of the member-states conditioned by it or threats of its infliction, as well as for the purpose of dumping or subsidized import and material damage to the branch of economy of the member-states conditioned by it, threat of its infliction or substantial delay of creating the branch of economy of the member-states shall be carried out by a body carrying out investigations on the basis of the application represented by persons mentioned in paragraph 2 of this Article in written or at own initiative.

2. Application mentioned in paragraph 1 of this Article shall be filed by:

1) a producer of analogous or directly competing goods (upon filing the application on applying special protective measure) or analogous goods (upon filing the application on applying antidumping or compensation measure) in the member-states or his (her) authorized representative;

2) association of producers the participants of which include producers of substantial part, but no less than twenty five percent of total production volume of analogous or directly competing goods (upon filing the application on applying special protective measure) or analogous goods (upon filing the application on applying antidumping or compensation measure) in the member-states or by the authorized representative of such association.

Authorized representatives of producers and associations mentioned in this paragraph shall have properly executed powers confirmed by documents the originals of which are represented to the body carrying out investigations together with the application.

3. The application shall be accompanied by evidences of supporting the application by producers of analogous or directly competing or analogous goods in the member-states. Sufficient evidences of supporting the application shall be considered as:

1) documents on accession to the application of other producers of analogous or directly competing goods in the member-states producing substantial part together with an applicant, but no less than twenty five percent of total production volume of analogous or directly competing goods in the member-states (upon filing application on applying special protective measure);

2) documents confirming that the share of production of analogous goods by producers in the member-states (including by an applicant) that expressed themselves in support of the application is no less than twenty five percent of total production volume of analogous goods in the member-states in condition than the production volume of analogous goods by the producers in the member-states (including by an applicant) that expressed themselves in support of the application is more than fifty percent of the total production volume of analogous goods by the producers in the member-states that expressed their opinion (support or disagreement) in respect of the application (upon filing the application on applying dumping or compensation measure).

4. Application mentioned in paragraph 1 of this Article shall contain:

1) details on an applicant, on production volume in quantitative and in monetary terms of analogous or directly competing goods (upon filing an application on applying special protective measure), analogous goods (upon filing an application on applying antidumping or compensation measure) in the branch of economy of the member-states within three years directly preceding the date of filing the application, as well as production volume in quantitative and monetary terms of analogous or directly competing goods (upon filing an application on applying the special protective measure) or analogous goods (upon filing an application on applying the antidumping or compensation measure) by producers in the member-states that supported the application, and their share in the total production volume in the member-states of analogous or directly competing goods (upon filing an application on applying the special protective measure) or analogous goods (upon filing an application on applying the antidumping or compensation measure);

2) description of goods imported to the customs territory of the Eurasian Economic Union in respect of which it is proposed to impose the special protective, antidumping or compensation measure with specification of the code of the nomenclature of goods of foreign economic activity of the Eurasian Economic Union;

3) name of exporting third countries of origin or departure of goods mentioned in subparagraph 2) of this paragraph, on the basis of data of the customs statistics;

4) details on well-known producers and (or) exporters of goods mentioned in subparagraph 2) of this paragraph in exporting third country, well-known importers and main well-known consumers of these goods in the member-states;

5) details on change of import volume of goods to the customs territory of the Eurasian Economic Union in respect of which it is proposed to impose the special protective, antidumping or compensation measures for the previous period, as well as for the following period for which the representative statistical data is available for the date of filing an application;

6) details on change of export volume of analogous or directly competing goods (upon filing an application on applying special protective measure) or analogous goods (upon filing an application on applying antidumping or compensation measure) from the customs territory of the Eurasian Economic Union for the previous period, as well as for the following period for which the representative statistical data is available for the date of filing an application.

5. Depending on the measure proposed in the application, together with details mentioned in paragraph 4 of this Article, it shall be specified:

1) evidences of increased import of goods, evidences of serious damage to the branch of economy of the member-states or threat of its infliction owing to increased import of goods, proposal on introduction of the special protective measure with specification of extent and validity term of such measure and plan of actions for adapting the branch of economy of the member-states to work in conditions of foreign competition within validity term of the special protective measure proposed by an applicant (upon filing an application on applying the special protective measure);

2) details on export price and normal value of goods, the evidences of material damage to the branch of economy of the member-states or threat of its infliction, or substantial delay of creating the branch of economy of the member-states owing to dumping import of goods, as well as proposal on introduction of the dumping measure with specification of its extent and validity term (upon filing an application on applying the antidumping measure);

3) details on existence and character of specific subsidy of exporting third country and of its amount if possible, evidences of material damage to the branch of economy of the member-states or threat of its infliction or substantial delay of creating the branch of economy of the member-states owing to the subsidized import of goods, as well as proposal on introduction of compensation measure with specification of its extent and validity term (upon filing an application on applying the compensation measure).

6. Evidences of serious damage to the branch of economy of the member-states or threat of its infliction (upon filing an application on applying the special protective measure) and evidences of material damage to the branch of economy of the member-states or threat of its infliction, or substantial delay of creating the branch of economy of the member-states owing to dumping import or subsidized import (upon filing an application on applying the antidumping measure or compensation measure) shall be based on objective factors

characterizing economic situation of the branch of economy of the member-states and shall be expressed in quantitative and (or) cost indicators for the previous period, as well as for the following period for which the representative statistical data is available for the date of filing the application (including data on production and sales volume of goods, share of goods at market of the member-states, cost of production of goods, price of goods, use of production capacities, employment of labour productivity, profit margin, production profitability, amount of investment to the branch of economy of the member-states).

7. Details presented in the application shall be accompanied by a reference to their source.

8. Upon specifying indices contained in the application, the single monetary and quantity units shall be used for the purpose of comparison.

9. The details contained in the application shall be verified by the heads of the producers that represented such details, as well as their workers liable for maintenance of accounting records and accounting reports, particularly concerning the details directly related to these producers.

10. The application accompanied by its non-confidential version (if there is confidential information in the application) shall be represented to a body carrying out investigations in accordance with paragraph 24 of Article 33 of this Law and shall be subject to registration on a date of receipt of the application to this body.

11. Date of filing the application shall be considered as the date of its registration in a body carrying out investigations.

12. The application on applying special protective, antidumping or compensation measures shall be rejected on the basis of the following grounds:

1) failure to represent materials mentioned in paragraphs 3-5 of this Article upon filing the application;

2) unreliability of materials represented by an applicant provided by paragraphs 3-5 of this Article;

3) failure to represent non-confidential version of the application.

Rejection of the application by other grounds shall not be allowed.

### **Article 33. Beginning of investigation and its carrying out**

1. The body carrying out investigations shall notify exporting third country in written on receipt of the application on applying antidumping or compensation measure prepared in accordance with Article 32 of this Law before adoption of a decision on beginning of the investigation.

2. Within thirty calendar days from the date of registration of the application, the body carrying out investigations shall verify credibility and certainty of evidences and details contained in this application before adoption of a decision on beginning of the investigation in

accordance with paragraphs 3-5 of Article 32 of this Law. Such term may be extended in necessary case of receiving additional details by the body carrying out investigations, but shall not exceed sixty calendar days.

3. The application may be revoked by an applicant before beginning of investigation or in the course of its investigation.

The application shall be considered as unfiled if it is revoked before beginning of investigation.

In case if the application is revoked in the course of carrying out investigation, the investigation shall be terminated without imposition of the special protective, antidumping or compensation measure.

4. Before adoption of a decision on beginning of investigation, the details contained in the application shall not be subject to public divulgation.

5. The body carrying out investigations shall adopt a decision on beginning of investigation or refusal in its carrying out before expiration of the term mentioned in paragraph 2 of this Article.

6. Upon adoption of a decision no beginning of investigation, the body carrying out investigations shall notify the authorized body of exporting third country in written, as well as other interested persons known to it on adopted decision and ensure placement of the notification on beginning of investigation on web-site of the Eurasian Economic Union within the term no more than ten business days from the date of adoption of the mentioned decision.

7. The date of placing the notification on beginning of investigation on web-site of the Eurasian Economic Union shall be considered as the date of beginning of investigation.

8. The body carrying out investigations may adopt a decision on beginning of investigation (as well as at own initiative) only in case if there are evidences of increased import and damage to the branch of economy of the member-states conditioned by it or threat of its infliction at its disposal or there is dumping or subsidized import and material damage to the branch of economy of the member-states, threat of its infliction or substantial delay of creating the branch of economy of the member-states.

In case if available evidences are insufficient, such investigation may not be initiated.

9. The decision on refusal in carrying out investigation shall be adopted in case if on the basis of results of considering the application, the body carrying out investigations detected that the details represented in accordance with paragraphs 4 and 5 of Article 32 of this Law do not attend to increased, dumping or subsidized import of goods to the customs territory of the Eurasian Economic Union and (or) material damage to the branch of economy of the member-states conditioned by it or threat of its infliction, or substantial delay of creating the branch of economy of the member-states owing to dumping or subsidized import or serious damage to the branch of economy of the member-states, or threat of its infliction owing to increased import to the customs territory of the Eurasian Economic Union.

10. Upon adoption of a decision on refusal in carrying out investigation, the body carrying out investigations shall notify an applicant on refusal in carrying out the investigation in written form within the term no more than ten calendar days from the date of adoption of such decision.

11. The interested persons shall have the right to apply in written and within the term established by this Law on own intention to participate in the investigation. They shall be considered as participants of investigation from the date of registering the application on intention to participate in the investigation by a body carrying out investigations.

The applicant and producers in the member-states that expressed themselves in support of the application shall be considered as participants of the investigation from the date of beginning of investigation.

12. Interested persons shall have the right to represent details necessary for carrying out investigation (including confidential information) with specification of the source of such details within the term that does not disturb the course of investigation.

13. The body carrying out investigations shall have the right to request additional details from an interested person for the purpose of investigation.

Requests may be directed to other organizations of the member-states.

The mentioned requests shall be directed by a head (deputy head) of a body carrying out investigations.

The request shall be considered received by an interested person from the date of its transfer to the authorized representative of the interested person or upon expiration of seven calendar days from the date of sending the request by mail service.

The response of an interested person shall be represented to a body carrying out investigations no later than thirty calendar days from the date of receipt of the request.

the response shall be considered received by a body carrying out investigations, if it is delivered by the body carrying out investigations no later than seven calendar days from the expiry date of the term mentioned in part five of this paragraph.

Details represented by an interested person upon expiration of the mentioned term may not be taken into account by a body carrying out investigations.

Upon motivated and written request of an interested person, the term of representing response may be extended by a body carrying out investigations.

14. In case if the interested person refuses to represent necessary information to a body carrying out investigations, does not represent it within established term or represents untrustworthy information obstructing the carrying out of investigation, such interested person shall be considered uncooperative, and the preliminary or final conclusion may be made by the body carrying out investigations on the basis of available information.

Failure to represent requested information in electronic form or in particular electronic format requested by a body carrying out investigations shall not be treated by the body carrying out investigations as refusal from cooperation in condition that the relevant

interested person may prove that full performance of criteria of representing information determined in the request of the body carrying out investigations is impossible or linked with significant material costs.

In case if the body carrying out investigations does not consider information represented by an interested person by the reasons being different from those mentioned in part one of this paragraph, this person shall be informed on the reasons and grounds for adoption of such decision and owing to this he (she) shall be provided with an opportunity to make own comments determined by the body carrying out investigations.

If upon the preparation of preliminary or final conclusion of a body carrying out investigations including determination of a normal value of goods (upon carrying out of antidumping investigation), the provisions of part one of this paragraph were applied and the information was used, including those represented by an applicant, the information used upon preparation of such conclusions shall be verified with the use of available information received from third sources or from interested persons in condition that carrying out of such investigation will not obstruct the course of investigation and will not lead to violation of terms of its carrying out.

15. The body carrying out investigations shall direct copies of the application or its non-confidential version (in case if there is confidential information in the application) to the authorized body of exporting third country and exporters known to it in the shortest possible time from the date of adoption of a decision on beginning of antidumping or compensation investigation, as well as shall represent such copies to other interested persons upon their request.

In case if there are too many exporters, copies of the application or its non-confidential version shall be directed only to the authorized body of exporting third country.

The body carrying out investigations shall represent copies of the application or its non-confidential version (in case if the application contains confidential information) to participants of the special protective investigation upon their request.

In the course of investigation, the body carrying out investigations shall provide participants of the investigation with an opportunity to familiarize with details represented in written by any interested person as the evidences related to the subject of investigation, upon their request considering necessity of confidential information protection.

In the course of investigation, the body carrying out investigations shall provide participants of the investigation with an opportunity to familiarize with other details having relation to the investigation and used by it in the course of investigation, but that is not confidential information.

16. Upon request of interested persons, the body carrying out investigations shall hold consultations on the subject of investigation.

17. In the course of investigation, all the interested persons shall be provided with an opportunity to protect own interests. Upon request of an interested person, the body carrying

out investigations shall ensure meeting for representing points of view considering the information confidentiality compliance. By this the absence of any of interested persons shall not entail infliction of damage to his (her) interests.

18. Consumers that use the goods being the objects of investigation in production of products, representatives of public associations of consumers, state bodies, bodies of local self-government, as well as other persons shall have the right to represent details to the body carrying out investigations that are related to the investigation.

19. Terms of carrying out investigation shall not exceed:

1) nine months from the date of beginning of investigation on the basis of the application on applying special protective measure (this term may be extended by a body carrying out investigations, but no more than three months);

2) twelve months from the date of investigation on the basis of the application on applying antidumping or compensation measure (this term may be extended by a body carrying out investigations, but no more than six months).

20. Carrying out of investigation shall not obstruct commission of customs operations in respect of goods being the objects of investigation.

21. For the purpose of ensuring carrying out of investigations and applying special protective, antidumping and compensation measures, the authorized body may request details, including those containing confidential information from the state bodies of the Republic of Kazakhstan and interested persons.

22. The state bodies of the Republic of Kazakhstan shall represent the details within the competence require for the purposes of carrying out investigations and applying special protective, antidumping and compensation measures, as well as those including confidential information:

1) upon requests of the authorized body;

2) upon requests of a body carrying out investigations through the authorized body.

In case of impossibility to represent information requested by the authorized body and (or) body carrying out investigation, the state bodies of the Republic of Kazakhstan shall inform the authorized body about this with specification of substantiations.

23. The authorized body shall ensure collection, processing and transfer of details including those containing confidential information requested by a body carrying out investigations.

24. Provision of evidences and details to a body carrying out investigations, as well as correspondence with the body carrying out investigations shall be carried out in Russian language, and originals of documents drawn up in foreign language shall be accompanied by a translation into Russian language (with a notarized accuracy of the translation).

25. Representatives of the authorized body shall take participation at meetings, consultations, as well as public hearings carried out in the course of investigation by a body carrying out investigations.



26. The date of completion of investigation is the date of considering report on results of the investigation by the Commission and the draft decision of the Commission mentioned in Article 5 of this Law.

In case if a body carrying out investigations made final conclusion on absence of the grounds for applying, review or cancellation of the special protective, antidumping or compensation measures, the date of completion of investigation shall be considered as the date for placement of the relevant notification by the body carrying out investigations on web-site of the Eurasian Economic Union.

In case of imposition of preliminary special duty, preliminary antidumping duty or preliminary compensation duty, the investigation shall be completed until the validity term expiration of the relevant preliminary duty.

27. In case if in the course of investigation, the body carrying out investigations establishes absence of increased import to the customs territory of the Eurasian Economic Union and serious damage to the branch of economy of the member-states conditioned by it or threat of its infliction, as well as dumping or subsidized import to the customs territory of the Eurasian Economic Union and material damage to the branch of economy of the member-states conditioned by it or threat of its infliction, or substantial delay of creating the branch of economy of the member-states, the investigation shall be completed without imposition of the special protective, antidumping or compensation measures.

#### **Article 34. Special aspects of carrying out antidumping investigation**

1. Antidumping investigation shall be terminated without imposition of the antidumping measure, if the body carrying out investigations establishes that the antidumping margin is less than minimum acceptable dumping margin or the volume of occurred or potential dumping import or extent of material damage conditioned by such import, or threat of its infliction, or substantial delay of creating the branch of economy of the member-states are insignificant.

By this, the minimum acceptable dumping margin shall be regarded as the dumping margin the amount of which does not exceed two percent.

2. Volume of dumping import from the certain exporting third country is insignificant, if it is less than three percent from the total volume of goods import being the objects of investigation to the customs territory of the Eurasian Economic Union in condition that more than seven percent cumulatively from the total volume of goods import being the objects of investigation to the customs territory of the Eurasian Economic Union is the share of the exporting third countries the individual share of which in the total goods import is less than three percent of the total volume of goods import being the objects of investigation to the customs territory of the Eurasian Economic Union.

3. Before adoption of a decision based on the results of antidumping investigation, the body carrying out investigations shall inform interested persons about main conclusions made

on the basis of the results of the investigation, considering necessity of protection of the confidential information and shall provide with an opportunity to make own comments.

The terms of making comments of interested persons shall be established by a body carrying out investigations, but may not be less than fifteen calendar days.

### **Article 35. Special aspects of carrying out compensation investigation**

1. After acceptance of an application to consideration and before adoption of a decision on beginning of the investigation, the body carrying out investigations shall make a proposal to the authorized body of exporting third country from which the goods are exported in respect of which the compensation measure is proposed to be imposed, to hold consultations for the purpose of clarifying the situation in respect of existence, amount and consequences of provision of the proposed specified subsidy and reaching the mutually acceptable decision.

Such consultations may continue in the course investigation.

2. Holding consultations mentioned in paragraph 1 of this Article shall not obstruct adoption of a decision on beginning of the investigation and application of the compensation measure.

3. Compensation investigation shall be terminated without imposition of the compensation measure, if the body carrying out investigations establishes that the amount of specified subsidy is minimal or the volume of occurred or potential subsidized import or extent of the material damage to the branch of economy of the member-states conditioned by such import, or threat of its infliction, or substantial delay of creating the branch of economy of the member-states is insignificant.

4. Amount of specified subsidy shall be recognized minimal, if it is less than one percent of the cost of goods being the objects of investigation.

Volume of subsidized import, as a rule, shall be recognized insignificant, if it is less than one percent of total import volume of analogous goods to the customs territory of the Eurasian Economic Union in condition that no more than three percent cumulatively from the total volume of analogous goods import to the customs territory of the Eurasian Economic Union is the share of the exporting third countries the individual share of which in the import is less than one percent of the total volume of analogous goods import to the customs territory of the Eurasian Economic Union.

5. Compensation investigation in respect of goods being the objects of subsidized import and occurred from developing or the least developed country-user of the tariff preferences system of the Eurasian Economic Union shall be terminated in case, if the body carrying out investigations establishes that the total amount of specific subsidies of exporting third country granted in respect of these goods does not exceed two percent of its cost per unit of goods or the import ratio of these goods from such third country in the total import volume of these goods to the customs territory of the Eurasian Economic Union is less than four percent in condition that the cumulative ratio in the import of these goods to the customs territory of the

Eurasian Economic Union from developing and the least developed countries, the ratio of each of which is less than four percent from the total import volume of these goods to the customs territory of the Eurasian Economic Union, does not exceed nine percent of the total import volume of these goods to the customs territory of the Eurasian Economic Union.

6. Before adoption of a decision on the basis of results of compensation investigation, the body carrying out investigations shall inform all the interested persons about main findings made in the course of the investigation in consideration of necessity of protecting confidential information and shall provide with an opportunity to make own comments.

The term for making comments of interested persons shall be established by a body carrying out investigations, but may not be less than fifteen calendar days.

### **Article 36. Special aspects of determining the branch of economy of the member-states in case of dumping or subsidized import**

1. Upon carrying out antidumping or compensation investigation, the branch of economy of the member-states shall be regarded as the meaning established by subparagraph 17) of Article 1 of this Law, with the exception of cases mentioned in paragraphs 2 and 3 of this Article.

2. In case if the producers of analogous goods in the member-states are importers of the goods at the same time, supposedly being the objects of dumping or subsidized import, or the persons linked with exporters or importers of goods supposedly being the objects of dumping or subsidized import, the branch of economy of the member-states shall be regarded as the rest of producers of analogous goods in the member-states.

Producers of analogous goods in the member-states shall be considered as the persons linked with exporters or importers of goods supposedly being the objects of dumping or subsidized import in case of:

1) separate producers of analogous goods in the member-states directly or indirectly control exporters or importers of goods being the objects of investigation;

2) separate exporters or importers of goods being the objects of investigation directly or indirectly control the producers of analogous goods in the member-states;

3) separate producers of analogous goods in the member-states and exporters or importers of goods being the objects of investigation, are under direct or indirect control of a third party ;

4) separate producers of analogous goods in the member-states and foreign producers, exporters or importers of goods being the objects of investigation directly or indirectly control a third party in condition that the body carrying out investigations has the grounds to suppose that this connection is conditioned by behavior of such producers that differs from the non-connected persons.

3. In exceptional cases, upon determination of the branch of economy of the member-states, the territory of these member-states shall be considered as the territory on

which two or more territorial detached competing markets operate, and the producers in the member-states within one of the mentioned markets shall be considered as the separate branch of economy of the member-states, if at this market for the purpose of consumption or processing, such producers sell no less than eighty percent of analogous goods produced by them, and demand at such markets for analogous goods is not satisfied considerably by the producers of such goods being on the other territory of the member-states.

In such cases, existence of material damage to the branch of economy of the member-states, threat of its infliction or substantial delay of creating the branch of economy of the member-states due to dumping or subsidized import, it may be established that even if the damage is not inflicted to the main part of the branch of economy of the member-states, in condition that the sale of goods being the objects of dumping or subsidized import is focused on one of the mentioned competing markets and the dumping or subsidized import inflicts damage to all or almost all the producers of analogous goods in the member-states within one such market.

4. In case if the branch of economy of the member-states is regarded as the meaning established by paragraph 3 of this Article, and based on results the decision on applying dumping or compensation measure is adopted, such measure may be applied in respect of the whole import of goods to the customs territory of the Eurasian Economic Union.

In the mentioned case, the antidumping or compensation duty shall be imposed only after providing exporters of goods with an opportunity by a body carrying out investigations to terminate the export of such goods to this territory at dumping prices (upon dumping import) or at subsidized process (upon subsidized import) or to accept the relevant obligations in respect of conditions of the export to the customs territory of the Eurasian Economic Union in condition that such opportunity was not used by the exporters.

### **Article 37. Public hearings**

1. On the basis of a petition represented by ant of participants of investigation in written and within the term established in accordance with this Law, the body carrying out investigations shall ensure holding of public hearings.

2. The body carrying out investigations shall be obliged to direct a notification to participants of the investigation about time and place of holding public hearings, as well as the list of questions considered in the course of holding public hearings.

Date of holding public hearings shall be specified no earlier than after fifteen calendar days from the date of direction of the relevant notification.

3. Participants of investigation or their representatives, as well as persons involved by them for the purpose of representing available details related to the investigation shall have the right to participate in public hearings.

In the course of public hearings, the participants of investigation may state own opinion and represent evidences related to the investigation. The representative of a body carrying out

investigations shall have the right to put questions to participants of public hearings concerning the essence of the facts delivered by them. The participants of investigation shall also have the right to put questions to each other and shall be obliged to respond to them. The participants of public hearings shall not be obliged to disclose information recognized confidential.

4. Details represented in the course of public hearings in verbal form shall be taken into consideration in the course of the investigation, if within fifteen calendar days after the date of holding the public hearings they were represented by participants of investigation to a body carrying out investigations in written form.

#### **Article 38. Collection of information in the course of investigation**

1. After adoption of a decision on beginning of antidumping or compensation investigation, the body carrying out investigations shall direct the list of questions to exporters and (or) producers of goods, being the objects of investigation known to it.

The list of questions shall be also directed to producers of analogous or directly competing goods (in case of carrying out the special protective investigation) or analogous goods (in case of carrying out the antidumping or compensation investigation) in the member states.

In case of necessity, the list of questions may be also directed to importers and consumers of goods being the objects of investigation.

2. The persons mentioned in paragraph 1 of this Article to whom the list of questions was directed, shall provide own responds to the body carrying out investigations within thirty calendar days from the date of its receipt.

According to request of the persons mentioned in paragraph 1 of this Article being motivated and stated in written form, this term may be extended by a body carrying out investigations no more than fourteen calendar days.

3. The list of questions shall be considered received by an exporter and (or) producers of goods after seven calendar days from the date of transferring directly to a representative of the exporter and (or) producer or after seven calendar days from the date of its sending by mail.

Responds to the questions included into the list shall be considered received by a body carrying out investigations, if they were received by the body carrying out investigations in confidential and non-confidential versions no later than seven calendar days from the date of expiration of the thirteen days term mentioned in paragraph 2 of this Article or the term of extension.

4. the body carrying out investigations shall be assured in accuracy and credibility of information represented by interested persons in the course of investigation.

For the purpose of verification of information represented in the course of investigation or receipt of additional information linked with carried out investigation, the body carrying out investigations in case of necessity may conduct the verification:

1) on the territory of a third country in condition of obtaining the agreement of the relevant foreign exporters and (or) producers of goods being the objects of investigation, and absence of objections from the side of the third country that was officially notified about the upcoming verification;

2) on the territory of the member-state in condition of obtaining the agreement of the relevant importers of goods being the objects of investigation and (or) producers of analogous or direct competing goods.

Verification shall be carried out after receipt of responds to the lists of questions directed in accordance with paragraph 1 of this Article, with the exception of cases when the foreign producer or exporter is agreed to conduct verification before direction of such responds and in the absence of objectives from the side of the relevant third country.

After obtainment of agreement of the relevant participants of investigation and before beginning of the verification, the list of questions and materials shall be directed to them and represented to civil servants directed for conduct of the verification. The body conducting verifications shall notify a third country on addresses and names of foreign exporters or producers which are planned to be verified, as well as on dates of conducting such verifications.

In the course of verification, other documents and materials required for confirmation of the credibility of information represented in responds to the list of questions may be also requested.

In case if upon conduct of verification, the body carrying out investigations intends to involve experts for such verification that are not civil servants of this body, the participants of investigation in respect of whom it is proposed to carry out verification activity shall be notified in advance on such decision of the body carrying out investigations. Participation of such experts in verification shall be admitted only in existence of a possibility to apply the sanctions for violation of confidentiality of the information received due to the verification.

5. For the purpose of verification of information represented in the course of investigation or receipt of additional information linked with carried out investigation, the body carrying out investigations shall have the right to direct own representatives to the location of interested persons, carry out collection of information, consultations and negotiations with the interested persons, familiarize with samples of goods and take the other actions required for carrying out investigation.

### **Article 39. Confidential information**

1. The state bodies of the Republic of Kazakhstan shall represent confidential information to the authorized body in accordance with the legislation of the Republic of Kazakhstan.

2. Information represented by an interested person to the authorized body shall be considered as confidential upon provision of substantiations by this person attending to that the divulgence of such information will provide competitive privilege to a third party or will entail unfavourable consequences for the person that represented such information, or from whom such information is received.

Substantiations shall be represented in written.

3. Interested persons representing confidential information to the authorized body shall also provide the non-confidential version of such information.

Non-confidential version shall be sufficiently detailed for understanding of essence of information represented in confidential form.

In exceptional cases when the interested person may not represent non-confidential version of confidential information, he (she) shall provide substantiation with detailed description of the reasons by which the provision of non-confidential version is impossible.

4. The authorized body may not transfer confidential information to third parties, with the exception of the body carrying out investigations.

Confidential information represented by interested persons may not be divulged without their written agreement.

Confidential information may not be used by civil servants of the authorized body in personal purposes.

#### **Article 40. Interested persons**

1. Upon carrying out investigation, the interested persons are:

1) producers of analogous or directly competing goods \*upon carrying out the special protective investigation) or analogous goods (upon carrying out the antidumping or compensation investigation) in the member-states;

2) association of producers, the most of participants of which are the producers of analogous or directly competing goods (upon carrying out the special protective investigation) or analogous goods (upon carrying out the antidumping or compensation investigation) in the member-states;

3) association of producers the participants of which carry out production of more than twenty five percent of the total production volume of analogous or directly competing goods (upon carrying out the special protective investigation) or analogous goods (upon carrying out the antidumping or compensation investigation) in the member-states;

4) an exporter, foreign producer or importer of goods being the objects of investigation, and association of foreign producers, exporters or importers of goods the main part of the participants of which are the producers, exporters or importers of these goods from exporting third country or country of origin of the goods;

5) the authorized body of exporting third country or country of origin of the goods;

6) consumers of goods being the objects of investigation (if they use such goods upon production of products), and associations of such consumers in the member-states;

7) public associations of consumers (if the goods are the means of consumption primarily by individuals).

2. In the course of investigation, the interested persons shall act on an independent basis or through own representatives that having the powers established in accordance with the legislation of the Republic of Kazakhstan.

If in the course of investigation, the interested person acts through an authorized representative, the body carrying out investigations shall bring all the information on a subject of investigation to the notice of the interested person only through this representative.

#### **Article 41. Notifications on decisions adopted due to investigations**

1. The body carrying out investigations shall publish the following notifications on the web-site of the Eurasian Economic Union on decisions adopted due to investigations on:

1) beginning of investigation;

2) imposition of preliminary special, preliminary antidumping or preliminary compensation duties;

3) potential applying the antidumping duty in accordance with Article 19 of this Law or potential applying the compensation duty in accordance with Article 29 of this Law;

4) completion of the special protective investigation;

5) completion of the investigation on the results of which the body carrying out investigations made a conclusion on existence of the grounds for imposition of antidumping or compensation duty or practicability of approval of the relevant obligations;

6) completion or suspension of the investigation due to approval of the relevant obligations;

7) completion of the investigation on the results of which the body carrying out investigations made a conclusion on absence of the grounds for imposition of special protective, antidumping or compensation measures;

8) other decisions adopted due to investigations.

Such notifications shall be directed by the authorized body to interested state bodies of the Republic of Kazakhstan and subjects of entrepreneurship registered in a territory of the Republic of Kazakhstan, the interests of which may be concerned by the adopted decisions mentioned in the notification.

2. The notification on beginning of investigation shall be published on the web-site of the Eurasian Economic Union within the term no more than ten business days from the date of adoption of the decision on beginning of the investigation by a body carrying out investigations and shall contain:

1) full description of goods being the objects of investigation;

2) name of exporting third country;



3) brief statement of details attending to existence of increased import to the customs territory of the Eurasian Economic Union and serious damage to the branch of economy of the member-states or threat of its infliction (upon adoption of the decision on beginning of special protective investigation);

4) brief statement of details attending to existence of dumping or subsidized import and existence of material damage to the branch of economy of the member-states or threat of its infliction, or substantial delay of creating the branch of economy of the member-states (upon adoption of the decision on beginning of antidumping or compensation investigation);

5) the address at which the interested persons may direct own opinion and details related to the investigation;

6) twenty five calendar days term within which the body carrying out investigations shall accept the applications on intention to take participation in the investigation from interested persons;

7) forty five calendar days term within which the body carrying out investigations shall accept the petitions on holding public hearings from participants of the investigation;

8) sixty calendar days term within which the body carrying out investigations shall accept the comments and details related to the investigations in written from interested persons.

3. Notification on imposition of preliminary special, preliminary antidumping or preliminary compensation duties shall be published on the web-site of the Eurasian Economic Union within the term no more than three business days from the date of adoption of such decision by the Commission and shall contain the following information:

1) name of an exporter of goods being the objects of investigation, or name of exporting third country (if it is impossible to name the exporter);

2) description of goods being the objects of investigation sufficient for the customs control;

3) grounds for a positive conclusion on existence of the dumping import with specification of amount of dumping margin and description of the grounds for choosing methodology of calculation and comparison of a normal value of goods and their export prices (upon imposition of preliminary antidumping duty);

4) grounds for a positive conclusion on existence of the subsidized import with description of the fact of availability of a subsidy and specification of the calculated amount of subsidy per unit of goods (upon imposition of preliminary compensation duty);

5) grounds for establishment of existence of serious or material damage to the branch of economy of the member-states, threat of its infliction or substantial delay of creating the branch of economy of the member-states;

6) grounds for establishment of cause and effect relationship between the increased import , dumping or subsidized import and serious or material damage to the branch of economy of the member-states, threat of its infliction or substantial delay of creating the branch of economy of the member-states respectively;

7) grounds for a positive conclusion on existence of the increased import (upon imposition of preliminary special duty).

4. Notification on potential applying the antidumping duty in accordance with Article 19 of this Law or compensation duty in accordance with Article 29 of this Law shall contain:

1) description of goods being the objects of investigation sufficient for the customs control;

2) name of an exporter of goods being the objects of investigation, or name of exporting third country (if it is impossible to name the exporter);

3) brief statement of details attending to performance of conditions mentioned in Articles 19 and 29 of this Law.

5. Notification on completion of the special protective investigation shall be published by a body carrying out investigations within the term no more than three business days from the date of completion of the investigation and shall contain the main findings that were drawn by the body carrying out investigations, on the basis of analysis of information being at its disposal.

6. Notification on completion of investigation on the results of which, the body carrying out investigations made a conclusion on existence of the grounds for imposition of antidumping or compensation duty or practicability of approval of the relevant obligations shall be published within the term no more than three business days from the date of completion of the investigation and shall contain:

1) explanations of the final conclusion of a body carrying out investigations on the results of the investigation;

2) indication to the facts on the basis of which such conclusion is made;

3) information mentioned in paragraph 3 of this Article;

4) indication to the reasons of acceptance or non-acceptance of arguments and requirements of exporters and importers of goods being the objects of investigation in the course of investigation;

5) indication to the reasons of adoption of decisions in accordance with paragraphs 7-11 of Article 13 of this Law.

7. Notification on completion or suspension of investigation due to approval of the relevant obligations shall be published within the term no more than three business days from the date of completion or suspension of the investigation and shall contain non-confidential version of these obligations.

8. Notification on completion of the investigation on the results of which the body carrying out investigations made a conclusion on absence of the grounds for imposition of special protective, antidumping or compensation measures shall be published within the term no more than three business days from the date of completion of the investigation and shall contain:

1) explanation of the final conclusion of a body carrying out investigations on the results of the investigation;

2) indication to the facts on the basis of which such conclusion provided by subparagraph 1) of this paragraph is made.

9. Notification on completion of investigation on the results of which the decision on non-applying the measure is adopted in accordance with Article 42 of this Law, shall be published within the term no more than three business days from the date of adoption of such decision and shall contain the explanation of the reasons of adopting the decision by the Commission on non-applying special protective, antidumping or compensation measures with specification of the facts and findings based on which such decision is adopted.

10. The body carrying out investigations shall ensure direction of all the notifications provided by the Agreement on establishment of the World Trade Organization signed in Marrakech on April 15, 1994 to the competent bodies of the World Trade Organization in part of carried out investigations and applied measures.

11. Provisions of this Article in consideration of the relevant differences shall be applied to notifications on beginning and completion of repeated investigations.

#### **Article 42. Non-application of special protective, antidumping and compensation measures**

1. The Commission may adopt a decision on non-applying special protective, antidumping or compensation measures based on results of the investigation even in case if the application of such measure conforms to criteria established by this Law.

The mentioned decision may be adopted by the Commission in case if the body carrying out investigations prepared the conclusion on the basis of results of analyzing the whole information represented by interested persons that the application of such measure may inflict damage to the interests of the member-states. Such decision may be reviews in case if the reasons that served as the ground for its adoption are changed.

Before adoption of a decision by the Commission on non-applying special protective, antidumping and compensation measures, the proposal on non-expediency of applying the relevant measure shall be coordinated by the authorized body with interested state bodies of the Republic of Kazakhstan.

2. the conclusion mentioned in paragraph 1 of this Article shall be based on the results of collective estimate of interests of the branch of economy of the member-states, consumers of goods being the objects of investigation (if they use such goods upon production of products), associations of such consumers in the member-states, public associations of consumers (if the goods are the means of consumption primarily by individuals) and importers of such goods. By this, such conclusion may be made only after that the mentioned persons were provided with an opportunity to make own comments on this issue in accordance with provisions of paragraph 3 of this Article.

Upon preparation of such conclusion, the priority shall be given to necessity of eliminating the distorting influence of increased, dumping or subsidized import on the ordinary course of trade and competition situation at the relevant goods market of the member-states and situation of the branch of economy of the member-states.

3. For the purpose of applying the provisions of paragraph 1 of this Article, the producers of analogous or directly competing goods (upon carrying out special protective investigation) or analogous goods (upon carrying out antidumping or compensation investigation) in the member-states, their associations, importers and associations of importers of goods being the objects of investigation, consumers of goods being the objects of investigation (if they use such goods upon production of products), and associations of such consumers in the member-states, public associations of consumers (if the goods are the means of consumption primarily by individuals) shall have the right to give own comments and represent information on this issue within the term established in the notification published in accordance with paragraph 2 of Article 41 of this Law. Such comments and information or their non-confidential version in the relevant cases shall be represented for familiarization to other interested persons mentioned in this paragraph that shall have the right to give own reply comments.

The information represented in accordance with provisions of this paragraph shall be taken into consideration independently from its source in condition of existence of objective facts confirming its credibility.

## **Chapter 6. FINAL PROVISIONS**

### **Article 43. Special aspects of appealing decisions on applying special protective, antidumping and compensation measures in a judicial proceeding**

The procedure and special aspects of considering the cases on appealing decision of the Commission and (or) actions (omission) of the Commission linked with applying special protective, antidumping and compensation measures shall be determined by the Statute of the Court of the Eurasian Economic Union and the Rules of the Court of the Eurasian Economic Union.

### **Article 44. Responsibility for breach of the legislation of the Republic of Kazakhstan on special protective, antidumping and compensation measures in respect of third countries**

Breach of the legislation of the Republic of Kazakhstan on special protective, antidumping and compensation measures in respect of third countries shall entail responsibility established by the Laws of the Republic of Kazakhstan.

### **Article 45. Order of entering of this Law into force**

1. This Law enters into force upon expiry of thirty calendar days after the date of its first official publication.

2. It shall be deemed to have lost force:

1) the Law of the Republic of Kazakhstan dated 28 December 1998 “On protective measures of internal market upon goods import” (The Bulletin of the Parliament of the Republic of Kazakhstan, 1998, No. 24, Article 446; 1999, No. 21, Article 763; 2005, No. 11, Article 40; 2006, No. 3, Article 22; No. 15, Article 95; 2010, No. 5, Article 23; No. 15, Article 71; 2011, No. 2, Article 26; 2013, No. 15, Article 81; 2014, No. 21, Article 122; № 22 , Article 131);

2) the Law of the Republic of Kazakhstan dated 13 July 1999 “On antidumping measures” (the Bulletin of the Parliament of the Republic of Kazakhstan, 1999, No. 19, Article 654; 2006, No. 1, Article 3; No. 3, Article 22; 2010, No. 15, Article 71; 2011, No. 11, Article 102; 2013, No. 15, Article 81; 2014, No. 21, Article 122);

3) the Law of the Republic of Kazakhstan dated 16 July 1999 “On subsidies and compensation measures” (the Bulletin of the Parliament of the Republic of Kazakhstan, 1999, No. 20, Article 732; 2006, No. 1, Article 3; 2010, No. 15, Article 71; 2011, No. 11, Article 102; 2013, No. 14, Article 75; No. 15, Article 81; 2014, No. 21, Article 122).

The President

of the Republic of Kazakhstan

N. Nazarbayev