

ANNEX 28
to the Treaty on the Eurasian
Economic Union

PROTOCOL
on the Common Rules for granting of Industrial Subsidies

I. General Provisions

1. This Protocol has been developed in accordance with Article 93 of the Treaty on the Eurasian Economic Union (hereinafter “the Treaty”) and shall determine the common rules governing the granting of subsidies for industrial goods, including in the provision or receipt of services that are directly related to the manufacture, sale (including storage and exportation from the territory of a Member State and transportation) and/or consumption of industrial goods.

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

"administrative-territorial entities" means constituent entities of the Russian Federation (including local self-governing authorities) and regions of the Republic of Belarus and the Republic of Kazakhstan (including the cities of Minsk, Astana and Almaty);

"like products" means – a goods that are entirely identical to the goods manufactured, exported from the territory of a Member State or transported under a specific subsidy or, in the absence of –such goods, any other goods with characteristics similar to goods manufactured, exported from the territory of a Member State or transported under a specific subsidy;

"compensatory measure" means a measure to neutralise the negative impact of a specific subsidy of a subsidising Member State on an economic sector of the Member State applying for the introduction of this measure;

"competent authority" means a state government authority of a Member State in charge of conducting investigations;

"material injury to a sector of the national economy" means deterioration, confirmed by evidence, of the situation in a national economic sector as a result of importation of industrial goods from the territory of the Member State that has provided a subsidy in the manufacture, transportation or storage of such goods, and expressed in the reduction in the volume of manufacture and sales of like products on the territory of a Member State, reduced profitability of the manufacture of such goods, a negative impact on inventories, employment, wages and the level of investment in such sector;

"national manufacturers of like products" means manufacturers of like products in the Member State conducting the investigation;

"sector of the national economy" means all manufacturers of like products in a Member State or those of them having a share in the total volume of manufacture of like products in the Member State of at least 25 percent;

"recipient of a subsidy" means a manufacturer of industrial goods that is the beneficiary of the subsidy;

"manufacturers of subsidised goods" means manufacturers of subsidised goods of the Member State that has provided a specific subsidy;

"industrial goods" means goods classified as group 25-97 goods in CN of FEA EAEU, as well as fish and fish products, except goods classified under CN of FEA EAEU as sub-items 2905 43 000 0 and 2905 44, items

3301, 3501 – 3505, sub-items 3809 10 and 3824 60, items 4101 – 4103, 4301, 5001 00 000 0 – 5003 00 000 0, 5101 – 5103, 5201 00 – 5203 00 000 0, 5301 and 5302 (sub-item 2905 43 000 0, mannitol; sub-item 2905 44, sorbite; item 3301, essential oils; items 3501 – 3505, albuminoid substances, modified starches, glues; sub-item 3809 10, surface treatments, sub-item 3824 60, sorbitol, other products, items 4101 – 4103, raw hides and skins; item 4301, undressed furs; items 5001 00 000 0 – 5003 00 000 0, raw silk and silk waste; items 5101 – 5103, wool and animal hair; sub-items 5201 00 – 5203 00 000 0, raw cotton, cotton waste, brushed cotton fibre; item 5301, raw flax; item 5302, raw hemp). The above goods description is not necessarily exhaustive.

Any changes to the list of CN of FEA EAEU codes shall be made by the Council of the Commission;

"subsidised goods" means industrial goods manufactured, transported, stored or exported from the territory of the subsidising Member State using a specific subsidy;

"subsidising Member State" means the Member State the subsidising authority of which provides a subsidy;

"subsidising authority" means one or more state authorities or local self-governing authorities of the Member States making decisions on the provision of subsidies;

"subsidy" means:

a) financial contribution provided by a subsidising authority of a Member State (or an authorised institution of a Member State), used for generating (ensuring) benefits and carried out through:

a direct transfer of funds (for example, in the form of impaired and other loans), acquisition of a share in the authorised capital or its increase, or an obligation to transfer such funds (e.g., loan guarantees);

full or partial waiver of the collection of payments that would have been otherwise included in the revenue of the Member State (e.g., tax exemptions, debt relief). In this case, the exemption of exported industrial goods from duties and taxes levied on like products when intended for domestic consumption or any reduction of duties and taxes or refund of such duties and taxes in an amount not exceeding the amount actually accrued shall not be considered as a subsidy;

provision of goods or services (except for industrial goods or services intended for the maintenance and development of the common infrastructure);

purchase of industrial goods;

b) any other form of income or price support (directly or indirectly) reducing the importation of industrial goods from the territory of any Member State or increasing the exportation of industrial goods into the territory of any Member State with resulting advantages;

"threat of material injury to a sector of the national economy" means inevitability, confirmed by evidence, of material injury to a sector of the national economy;

"damage to a sector of the national economy" means material injury to a sector of the national economy, a threat of material injury to a sector of the national economy or a significant slowdown in the creation of a sector of the national economy.

II. Specific Subsidies

3. In order to determine whether a subsidy is specific for an industrial enterprise or an industrial sector or for a group of industrial enterprises or industrial sectors (hereinafter “certain enterprises”) within the territory of operation of a subsidising authority, the following principles shall apply:

1) if the subsidising authority or a legal act regulating the functioning of the subsidising authority limits access to a subsidy only to certain enterprises, such subsidy shall be deemed specific if the group of industrial enterprises or group of industrial sectors does not include all industrial enterprises or industrial sectors on the territory of the subsidising Member State;

2) if the subsidising authority or a legal act regulating the functioning of the subsidising authority establishes objective criteria or conditions (criteria which are neutral, do not create advantages for some enterprises as compared to other enterprises, are economic in nature and horizontal by the method of application, for example, in terms of the number of employees or the sizes of enterprises) determining the right to obtain a subsidy and its amount, such subsidy shall not be deemed specific, provided that the right to obtain the subsidy is automatic and that the above criteria and conditions are strictly adhered to. The criteria and conditions shall be specified in laws, regulations, legal acts or other official documents and shall be verifiable;

3) if there is reason to believe that a subsidy that seems non-specific based on the application of the principles set forth in sub-paragraphs 1 and 2 of this paragraph may in fact be specific, the following factors may be taken into account (subject to taking into consideration the degree of diversification

of economic activities within the territory of operation of the subsidising authority, as well as the effective period of such subsidy):

the use of the subsidy by a limited number of certain enterprises;

the predominant use of the subsidy by certain enterprises;

the provision of disproportionately large amounts of subsidies to some enterprises;

the method of discretisation applied by the subsidising authority when deciding on providing the subsidy (in this respect, in particular, information on the frequency of rejections or approvals of applications for subsidies and reasons for respective decisions shall be taken into account).

4. A subsidy, the use of which is limited to certain enterprises located within a designated geographical region forming a part of the territory of operation of the subsidising authority, shall be deemed specific. Introduction or modification by a state authority of a Member State of tax rates in force within the entire territory of its operation shall not be regarded as a specific subsidy.

5. Any subsidy falling under the provisions of Section III of this Protocol shall be deemed specific.

The specific nature of a subsidy shall be confirmed based on the evidence of the specificity of the subsidy in accordance with this section.

6. A Member State shall be entitled to apply to the Commission in order to agree on its provision of a specific subsidy.

The Member States shall not apply compensatory measures to subsidies that are provided for the period, on the terms and in the amounts approved by the Commission.

The Member States shall, on a mandatory basis, communicate to the Commission the regulatory legal acts providing for the provision of specific subsidies within the period determined under an international treaty within the Union and stipulated in paragraph 7 of this Protocol.

If a Member State has grounds to believe that provision of a specific subsidy by another Member State may damage a sector of the national economy, such Member State shall be entitled to initiate respective proceedings by the Commission.

If the results of the proceedings confirm the presence of damage to the sector of the national economy, the Commission shall decide that the Member State that provides such specific subsidy is obliged to eliminate the conditions leading to the damage, unless the Member States involved in the proceedings have agreed otherwise within the time limit determined under an international treaty within the Union and stipulated in paragraph 7 of this Protocol.

The Commission shall determine a reasonable time for the execution of such decision.

If a Member State in respect of which the above decision is adopted, fails to execute the decision of the Commission within the determined time limit, other Member States may apply to the Court of the Union.

The provisions of this paragraph shall be applied subject to the transitional provisions stipulated in paragraph 1 of Article 105 of the Treaty.

7. The Member States shall determine under an international treaty within the Union:

the procedure for the voluntary agreement with the Commission of specific subsidies and adoption by the Commission of relevant decisions;

the procedure for the Commission to hold the proceedings (including with regard to violations of the conditions, procedure for the provision and use of specific subsidies determined by this Protocol);

the criteria for the Commission to adopt decisions on admissibility or inadmissibility of specific subsidies (including taking into account the development of existing and new cooperative ties between manufactures of the Member States);

the procedure and terms for the Commission to request information on subsidies provided.

The date of entry into force of the international treaty is stipulated in paragraph 1 of Article 105 of the Treaty.

8. If a Member State has determined a requirement for the recipient of a subsidy (manufacturer) to perform certain technological operations in the manufacture of certain goods in order to obtain a specific subsidy, the implementation of such operations by a manufacturer of another Member State in other Member States shall be regarded as the proper discharge of such requirement in accordance with the procedure determined by the Supreme Council.

III. Prohibited Subsidies

9. The following types of subsidies shall be prohibited:

an export subsidy, that is, a subsidy contingent, as the sole or one of several conditions for its provision, with the results of the exportation of industrial goods from the territory of the Member State providing this subsidy to the territory of another Member State;

a replacement subsidy, that is, a subsidy contingent, as the sole or one of several conditions for its provision, with the use of industrial goods originating from the territory of the Member State providing this subsidy;

A subsidy shall be deemed contingent with an activity, in particular, if there is evidence of the fact that the provision of this subsidy that is not legally bound to the results of the exportation of industrial goods from the territory of the subsidising Member State or the use of industrial goods originating from the territory of such Member State is, in fact, associated with the actual or expected export (exportation) or export income (exportation income), or with the requirement for the use of industrial goods originating from the territory of the subsidising Member State.

The mere fact that a subsidy is provided to an economic entity effecting exportation may not serve as a grounds for its consideration as an export subsidy.

10. If provision of a specific subsidy by a Member State results in damage to a sector of the national economy of another Member State, such subsidy shall be prohibited.

Any damage to a sector of the national economy must be proved in accordance with section V of this Protocol.

11. The Member States shall not retain or introduce measures applied on the basis of a regulatory legal act or a legal act of a subsidising authority the observance of which is required in order to obtain specific subsidies and which comply with one of the following conditions:

1) shall contain requirements of:

procurement or use by an economic entity of industrial goods originating from the territory of the Member State introducing the measure or

from any local source specified by the subsidising authority (regardless of whether specific goods, their volume or value or the proportion of the volume or value of their local manufacture are specified);

restrictions on the procurement or use by an economic entity of industrial goods imported from the territory of any Member State in an amount related to the volumes or value of industrial goods exported by this economic entity and originating from the territory of the Member State introducing the measure;

2) shall restrict:

importation by an economic entity from the territory of any Member State of industrial goods used in local manufacture or related to such manufacture (including depending on the volume or value of goods originating from the territory of the Member State introducing the measure and exported by an economic entity to the territory of another Member State);

importation by an economic entity from the territory of any Member State of industrial goods used in local manufacture or related to such manufacture by restricting access of the economic entity to the currency of any Member State in the amount of such currency earnings due to the enterprise;

exportation by a economic entity of industrial goods into the territory of any Member State or sales by an economic entity of industrial goods on the territory of any Member State (depending on the specification of goods, their volume or value or proportion of the volume or value of their local manufacture by this economic entity).

12. Specific subsidies shall be prohibited if their provision leads to a serious infringement of the interests of any Member State. A serious

infringement of the interests of a Member State shall occur when a specific subsidy provided by another Member State results in:

1) displacement of like products from the market of the subsidising Member State or restraining of the increase in the importation of like products originating from the territory of any of the Member States into the market of the subsidising Member State;

2) displacement of like products originating from the territory of any Member State from the market of a third Member State or restraint of the increase in the import of such like products to the territory of a third Member State;

3) significant underpricing of industrial goods manufactured, transported or exported from the territory of the subsidising Member State using a specific subsidy as compared to the price of like products originating from the territory of another Member State on the same market of any of the Member States or a significant regulation of price increases, price reductions or lost sales in the same market.

13. A serious infringement of the interests referred to in paragraph 12 of this Protocol shall be determined in accordance with this Section and proved in accordance with section V of this Protocol.

14. The measures specified in paragraph 11 of this Protocol, as well as prohibited subsidies, including the following, shall not be provided or retained on the territories of the Member States (in this case, the export of goods shall refer to the exportation of goods from the territory of the subsidising Member State to the territory of another Member State):

1) programmes exempting an exporter from the mandatory sale to the Member State of part of foreign exchange revenues or permitting the use of

multiple exchange rates through partial depreciation of the national currency resulting in benefits for the exporter due to the exchange rate differences;

2) internal transport and freight tariffs for export shipments imposed or collected by the Member State on more favourable terms as compared to those applied to transportations in the domestic market;

3) provision of goods and services used in the manufacture of exported goods on more favourable terms as compared to those applied in the manufacture of like products sold in the domestic market;

4) full or partial exemption, deferral or reduction of taxes or any other fees paid or payable by economic entities and contingent with the results of export or the use of goods originating from the territory of the Member State providing these benefits. A deferral, in this case, shall not represent a prohibited subsidy if penalties subject to payment are levied for the non-payment of taxes. Charging the value-added tax at a zero rate from exported goods shall not indicate a prohibited subsidy;

5) special deductions contingent with the results of export and reducing the tax base of goods to a greater extent as compared to like products sold in the domestic market;

6) exemption, reduction, deferral of taxes or special deductions applicable to calculate the tax base of goods and services used in the manufacture of exported goods to a greater extent as compared to the exemption, reduction, deferral of taxes or special deductions applicable to calculate the tax base for goods and services used in the manufacture of like products sold in the domestic market;

7) collection of customs duties for raw materials and other materials used in the manufacture of exported products at lower rates as compared to

the same raw materials and other materials used in the manufacture of like products for domestic consumption, or refund of customs duties for raw materials and materials used in the manufacture of exported products to a greater extent as compared to the same raw materials and other materials used in the manufacture of like products sold in the domestic market;

8) reduction or refund of import duties collected on imported raw materials and other materials used in the manufacture of products if the content of domestic raw materials or other materials in the manufactured products is mandatory (regardless of whether specific goods, their volume or value or proportion of the volume or value in their local manufacture are specified);

9) charging premiums insufficient to cover long-term operating costs and losses under export credit guarantee or insurance programmes, insurance or guarantee programmes against increase in the value of exported goods or currency risks;

10) granting export credits at rates below the rates the recipients of these credits would actually have to pay for the use of comparable credits (subject to the same period and currency of the credit, etc.) under the market conditions or repayment of all or part of the costs incurred by exporters or financial institutions in connection with obtaining the credits. Export credit practices complying with the provisions on interest rates of the Arrangement on Officially Supported Export Credits of the Organisation for Economic Cooperation and Development shall not be regarded as prohibited subsidies;

11) reduction in tariffs for electricity or energy sources sold to an enterprise, provided that such subsidies are contingent with the results of export or the use of domestic goods instead of imported goods.

15. The Commission, as guided by this Protocol, shall not approve any prohibited subsidies as permissible.

The provisions of this paragraph shall be applied subject to the transitional provisions stipulated in paragraph 1 of Article 105 of the Treaty.

16. If a Member State has a reason to believe that the subsidising authority of another Member State provides a prohibited subsidy and/or introduces measures required to obtain specific subsidies in accordance with this Protocol, the first Member State shall be entitled to apply to that other Member State requesting consultations on the cancellation of prohibited subsidies or measures.

17. If, within 2 months from the date of receipt over the official diplomatic channels of the notice of consultations specified in paragraph 16 of this Protocol, the Member States fail to reach a mutual agreement, the existing disagreements shall be resolved in accordance with Article 93 of the Treaty.

If, based on the results of dispute resolution, it is decided that one of the Member States provides a prohibited subsidy specified in paragraphs 9 and 12 of this Protocol and/or applies the measures referred to in paragraph 11 of this Protocol, this Member State shall cancel such prohibited subsidies or measures immediately, regardless of whether such prohibited subsidies or measures result in a damage to the national economy of other Member States, and shall introduce a compensatory measure in relation to such prohibited subsidies in accordance with paragraphs 89-94 of this Protocol.

18. Within a specified transition period, subsidising authorities shall be entitled to provide subsidies through application of measures in accordance with the Annex to this Protocol.

IV. Permissible Subsidies

19. Subsidies that are not prohibited and do not represent specific subsidies according to the this Protocol shall be recognised as permissible subsidies, the provision of which does not distort the mutual trade between the Member States.

The Member States may provide such subsidies without limitation and the provisions of this Protocol regarding the use of countervailing and response measures or prohibiting the provision of subsidies shall not apply in respect of such subsidies.

20. The Member States shall be entitled to provide subsidies provided for by this Section without the consent of the Commission.

The provisions of this paragraph shall be applied subject to the transitional provisions stipulated in paragraph 1 of Article 105 of the Treaty.

21. The subsidies specified in section VII of this Protocol that are specific under section II of this Protocol, but are recognised by the Member States as subsidies that do distort the mutual trade, shall not give grounds for the adoption of compensatory measures under Section VIII of this Protocol.

V. Investigation Procedure

22. Investigations aimed to analyse the conformity of subsidies provided on the territory of a Member State to the provisions of this Protocol, as well as to determine the existence of damage to a sector of the national economy as a result of importation of subsidised goods from the territory of the Member State that has provided the specific subsidy or displacement of

like products from the market of the subsidising Member State, shall be conducted by the competent authority following a written application filed in accordance with this Protocol by the national manufacturers of like products registered on the territory of that Member State or by the competent authority on its own initiative (hereinafter “the application”).

23. The application shall be filed by the national manufacturer of like products or by an association of such manufacturers, including manufacturers comprising a sector of the national economy, as well as representatives of these persons duly authorised under the legislation of the Member State of registration of these representatives (hereinafter “the applicants”).

24. The application shall include:

- 1) information on the applicant;
- 2) description of the goods (indicating the country of origin and the CN of FEA EAEU code);
- 3) information on the existence, nature and extent of the specific subsidy;
- 4) information on the manufacturers of subsidised goods;
- 5) information on the national manufacturers of like products;
- 6) information on changes in the volume of importation of subsidised goods into the territory of the Member State with the competent authority of which the application is filed 3 calendar years before the date of filing the application;
- 7) information on changes in the volume of exportation of like products from the territory of the Member State with the competent authority of which the application is filed to the territory of other Member States;

8) evidence of damage to a sector of the national economy as a result of the importation of subsidised goods or displacement of like products from the market of the subsidising Member State. Evidence of damage to a sector of the national economy as a result of the importation of subsidised goods or displacement of like products from the market of the subsidising Member State shall be based on objective factors describing the economic situation in the sector of the national economy and may be expressed in quantitative terms (including the volume of manufacture and volume of sales of the goods, the share of the goods in the market of the Member State, the cost of production of the goods, the price of the goods, the data on the production capacity utilisation, productivity, profit margins, profitability of the manufacture and sales of the goods, and the level of investment in the sector of the national economy);

9) information on changes in the volume of importation of like products (in quantitative and value terms) into the customs territory of the Union for the 3 calendar years preceding the date of the application;

10) information on changes in the volume of exportation of like products (in quantitative and value terms) from the customs territory of the Union for the 3 calendar years preceding the date of the application;

11) analysis of other factors that might affect the sector of the national economy in the period under consideration.

25. For purposes of comparability, the cost parameters shall be specified in the application using monetary units determined by the Commission for the maintenance of foreign trade statistics.

26. The application, together with its non-confidential version (if the application contains confidential information), shall be filed with the

competent authority and shall be subject to registration on the day of its receipt by this authority.

27. The application may be rejected on the following grounds:

non-compliance of the applicant with the requirements determined in paragraph 23 of this Protocol;

non-presentation of the information specified in paragraph 24 of this Protocol;

submission of inaccurate information by the applicant.

An application may not be rejected on any other grounds.

28. Prior to the adoption of a decision on initiation of an investigation, the competent authority shall send a written notification of the receipt of the application to the authorised authority of the Member State on the territory of which the specific subsidy under consideration is provided.

29. In order to decide on the initiation of an investigation, the competent authority shall, within 30 calendar days from the date of registration of the application, examine the adequacy and reliability of the evidence and information contained in this application in accordance with paragraph 24 of this Protocol. Should the competent authority require any additional information from the applicant, this period may be extended, but must not exceed 40 calendar days from the date of registration of the application.

30. The application may be revoked by the applicant before the commencement of the investigation or during its conduct.

If the application is withdrawn before the commencement of the investigation, such application shall be deemed not filed.

If the application is withdrawn during the investigation, the investigation shall be terminated or continued based on the decision of a competent authority.

31. Following acceptance of the application for consideration and prior to the decision to commence an investigation, the competent authority shall offer the authorised authority of the Member State that has provided the specific subsidy to hold consultations in order to clarify the availability, amount and use, as well as the consequences of the provision of the specific subsidy in order to achieve a mutually acceptable solution. Such consultations may be held in the course of the investigation.

32. Holding consultations in order to clarify the availability, amount and consequences of the provision of the specific subsidy shall not preclude the competent authority from deciding to commence an investigation and to prepare, based on the results of such investigation, a report on compliance of the specific subsidy provided on the territory of another Member State with the provisions of this Protocol and/or on damage caused to a sector of the national economy as a result of the importation of subsidised goods from the territory of the Member State that has provided the specific subsidy, as well as on the transfer to the Member State on the territory of which the specific subsidy is provided of a notice of application of compensatory measure.

33. The competent authority shall decide to commence or refuse an investigation before the expiry of the period referred to in paragraph 29 of this Protocol.

Having decided to refuse to conduct an investigation, the competent authority shall within no more than 10 calendar days from the date of such

decision notify the applicant in writing of the grounds for the refusal to conduct the investigation.

Having decided to commence an investigation, the competent authority shall notify in writing the authorised authority of the Member State which has provided the specific subsidy, as well as other interested persons known to it, of the decision, made and, within not more than 5 working days from the date of making the decision, shall publish a notice of commencement of the investigation. The date of publication of the notice of commencement of the investigation shall be deemed the commencement date of the investigation.

34. The competent authority may decide to commence an investigation (including on its own initiative) if it has evidence of violations of this Protocol and/or the existence of damage to a sector of the national economy as a result of the importation of subsidised goods into the territory of this Member State or displacement of a like products by subsidised goods from the market of the Member State that has provided the specific subsidy or any other Member State.

No investigation may be commenced in case of insufficient evidence.

35. Following a decision to commence an investigation, the competent authority shall send a list of questions to all national manufacturers of like products known to it and manufacturers of subsidised goods under investigation to be answered by them for the purposes of the investigation.

The list of questions shall be deemed received on the date of its transfer directly to the representative of a national manufacturer of like products or a manufacturer of subsidised goods or within 7 calendar days from the date of dispatch of the list by mail.

National manufacturers of like products and manufacturers of subsidised goods under investigation to whom the list of questions was sent shall submit their answers to the competent authority within 30 calendar days from the date of their receipt of such list. Upon a reasoned request executed made in writing by the national manufacturers of like products and manufacturers of subsidised goods under investigation, this period may be extended by the competent authority, but not more than by 10 calendar days.

36. In order to verify the information submitted during the investigation or to obtain any additional information associated with the investigation, the competent authority may conduct the investigation on the territory of the Member State which has provided the specific subsidy, subject to the consent of the respective manufacturer of subsidised goods under investigation, as well as subject to prior notification to the representatives of the government of the respective Member State and in the absence of objections of this Member State as to the conduct of the investigation on its territory.

In order to verify the information submitted during the investigation or to obtain any additional information associated with the investigation, the competent authority shall have the right to send its representatives to the location of national manufacturers of like products, hold consultations and negotiations with interested persons, examine samples of the subsidised goods under investigation, and take all other actions required for the investigation that do not contradict the legislation of the Member State conducting the investigation.

37. In the course of the investigation, the competent authority may send requests for information relating to the ongoing investigation to authorised

authorities of the Member State providing or having provided the subsidy under consideration, as well as to other interested persons.

38. Interested persons may submit any information required for the investigation (including confidential information), indicating its source, no later than on the date specified in the notice of the commencement of the investigation. The competent authority shall have the right to request additional information from interested persons.

39. Evidence and information related to the investigation shall be submitted to the competent authority in the state language of the Member State conducting the investigation and the original documents in a foreign language shall be accompanied by a translation duly certified in accordance with the established procedure.

40. In the course of the investigation, the competent authority, taking into account the need to protect confidential information in accordance with this Protocol, shall provide to the interested persons, upon their written requests, an opportunity to examine the information submitted in writing by any interested person as the evidence relating to the investigation. The competent authority shall enable participants of the investigation to examine all other information relevant to the investigation and used in the course of the investigation, except for confidential information, in accordance with this Protocol.

41. State government (administration) authorities of the Member States authorised in the field of customs procedures and maintenance of state statistics, other state government (administration) authorities of the Member States and territorial (local) state government (administration) authorities shall assist in the investigation and provide, upon request from the competent

authority, all information required to conduct the investigation (including confidential information).

42. The duration of an investigation shall not exceed 6 months from its commencement date.

An investigation shall be deemed completed on the date of dispatch by the competent authority of the results of the investigation for consideration to the government of its state.

43. Following an investigation, the competent authority shall prepare a report on the conformity of the subsidy provided on the territory of another Member State to the provisions of this Protocol.

44. If the results of an investigation confirm a violation of this Protocol and/or damage caused to a sector of the national economy, the Member State the competent authority of which has conducted the investigation shall deliver to the Member State on the territory of which the specific subsidy under consideration is provided a statement on the introduction of a compensatory measure.

45. When determining the sector of the national economy, the territory of the Member State the competent authority of which is conducting the investigation may be regarded as a territory having two or more competitive markets, and national manufacturers of like products within one of these markets may be regarded as a separate sector of the national economy if such manufacturers sell in this market at least 80 percent of the like products manufactured by them and the demand for the like products in this market is not satisfied to a considerable extent by the manufacturers of these products located on the rest of the territory of the Member State conducting the investigation. In such cases, the existence of damage to a sector of the

national economy may be determined even if the main part of the sector of the national economy has not suffered any damage, provided that the sales of subsidised goods are concentrated in one of the competing markets and the importation of subsidised goods causes damage to at least 80 percent of national manufacturers of like products within one of such markets.

46. The amount of a specific subsidy shall be determined based on the amount of benefits generated by the recipient of the subsidy. When calculating the amount of benefits, the competent authority shall consider the following:

1) participation of the subsidising authority in the capital of the organisation shall not be regarded as provision of a specific subsidy if such participation may not be regarded as non-complying with the common investment practices (including the provision of risk capital) effective on the territory of the respective Member State;

2) a loan provided by the subsidising authority shall not be regarded as a specific subsidy, if there is no difference between the amount the borrowing organization pays for the state loan and the amount that it would have paid for a comparable commercial loan that such organisation may obtain in the credit market of the respective Member State. Otherwise, the difference between these amounts shall be regarded as benefits;

3) a loan guarantee provided by the subsidising authority shall not be regarded as provision of a specific subsidy, if there is no difference between the amount the organization receiving the guarantee pays for the loan guaranteed by the subsidising authority and the amount it would have paid for a comparable commercial loan without the state guarantee. Otherwise, the

difference between these amounts, adjusted for the differences in fees, shall be regarded as benefits;

4) any supply of goods, provision of services or purchase of goods performed by the subsidising authority shall not be regarded as provision of a specific subsidy if such goods or services are supplied for a less than adequate remuneration or the goods are not purchased for more than adequate remuneration. The adequacy of remuneration shall be determined on the basis of prevailing market conditions of purchase and sale of such goods and services in the market of the respective Member State (including their price, quality, availability, liquidity, transportation and other conditions of purchase or sale of goods).

47. The amount of the subsidy shall be calculated per unit of goods (ton, cubic meter, piece, etc.) imported into the territory of the Member State the competent authority of which is conducting the investigation, or sold in the market of the Member State on the territory of which the specific subsidy is provided or in the market of another Member State.

48. When calculating the amount of the subsidy, inflation indicators in the respective Member State shall be taken into account if the inflation rate is high enough to distort the obtained results.

49. The amount of the subsidy per unit of goods shall be determined on the basis of the expenditures of the Member State having provided the specific subsidy for these purposes.

50. When calculating the amount of the subsidy per unit of such goods, the cost of the goods shall be calculated as the total value of sales of the recipient of the subsidy in the 12 months preceding the provision of the subsidy, for which the required data are available.

51. When calculating the amount of the subsidy, the amounts of any registration fees or other expenses incurred to obtain the subsidy shall be deducted from the total amount of the subsidy.

52. If the subsidy is not provided in respect of a certain amount of industrial goods produced, exported or transported, the amount of the subsidy per unit of goods shall be calculated by dividing the total amount of the subsidy by the amount of the volume of manufacture, sales or exports of such goods in the period of the provision of the subsidy taking into account, if necessary, the share of imported subsidised goods in the total volume of manufacture, sales or exports of the goods.

53. If the subsidy is provided in connection with the development or acquisition of fixed assets, the amount of the subsidy shall be calculated by distributing the subsidy along the average depreciation period of such fixed assets in the given sector of the economy of the Member State having provided the specific subsidy. The amount of the subsidy per unit of goods shall also be calculated taking into account the subsidies provided for the purchase of fixed assets prior to the period covered by the investigation, the depreciation period for which has not yet expired.

54. When calculating the amount of the subsidy, if the value of the subsidy is different at different times or for different purposes for the same goods, the weighted average indicators shall be applied for the amounts of the subsidy based on the volume of manufacture, sales and exports of goods.

55. If the subsidy is provided in the form of tax exemptions, the cost of the goods shall be determined by calculating the total amount of their sales in the last 12 months of the application of the tax exemptions.

56. Subsidies provided during the calendar year by different subsidising authorities and/or for the implementation of different programmes shall be summarised.

57. The fact of displacement of like products from the market of the subsidising Member State or from the market of another Member State or restraining the increase in the importation of like products into the territory of the subsidising Member State, or restraining the increase in the exportation of the goods into the territory of another Member State shall be determined if it is confirmed that there has been an adverse change in the share of like products in the market of the subsidising Member State or in the market of another Member State with respect to subsidised goods. This fact shall be determined for a period sufficient to prove the evident trends in the development of the market of the respective goods, which under normal conditions shall not be less than 1 year.

58. Adverse changes in the share of like products in the market of the subsidising Member State or in the market of another Member State shall include one of the following situations:

- 1) an increase in the market share of subsidised goods;
- 2) the market share of the subsidised goods remains unchanged in circumstances when, in the absence of the specific subsidy, it would have reduced;
- 3) the market share of subsidised goods reduces, but at a slower rate than it would have been reducing in the absence of the specific subsidy.

59. Underpricing shall be established by comparing the prices of the subsidised goods in the relevant market with the prices of the goods manufactured, transported or exported to the territory of any Member State

without the use of the specific subsidy. The comparison shall be made at the same level of trade and in comparable time periods. In the comparison, all factors affecting the comparability of prices shall be taken into consideration. If the above comparison cannot be performed, underpricing may be established based on the average export prices.

60. If, in accordance with Article 93 of the Treaty, two Member States lead a dispute on the existence of a serious infringement of interests, under paragraphs 12, 57-59, 61 and 62 of this Protocol, in the market of a third Member State, such Member State shall provide to the disputing Member States all statistical information at its disposal related to the subject matter of the dispute and changes of the shares of goods originating from the territories of the disputing Member States in the market of such third Member State, as well as statistical information on the prices of relevant goods. In this case, this Member State shall be entitled not to conduct any special analysis of the market and prices and not to provide any information regarded as a trade secret or State secret.

61. The fact of a serious infringement of interests may not be established upon existence of the following circumstances in the corresponding period:

- 1) existence of bans or restrictions on the exportation of goods from the territory of the Member State determining the fact of a serious infringement of interests or bans or restrictions on the importation of goods from the territory of that Member State into the market of another Member State;

- 2) adoption by an authorised authority of a Member State importing like products and practising monopoly in trade or state trading in these products of a decision to reorient the importation from the Member State

determining the fact of a serious infringement of interests to the importation from another Member State for non-commercial reasons;

3) natural disasters, strikes, transport disruptions or other force majeure circumstances producing a serious negative impact on the manufacture, quality, quantity or price of the goods intended for exportation from the Member State determining the fact of a serious infringement of interests;

4) existence of agreements restricting the exportation from the Member State determining the fact of a serious infringement of interests;

5) a voluntary reduction of the possibility of exportation of industrial goods from the Member State determining the fact of a serious infringement of interests (including when economic entities of this Member State have autonomously reoriented the export of these like products to new markets);

6) non-compliance with standards and/or other administrative requirements in the Member State onto the territory of which the goods are imported.

62. In the absence of circumstances referred to in paragraph 61 of this Protocol, the existence of a serious infringement of interests shall be determined on the basis of the information provided to the Court of the Union or independently obtained by the Court of the Union.

63. Any damage to a sector of the national economy as a result of the importation of subsidised goods shall be determined on the basis of analysis of the volume of importation of subsidised goods and the impact of such importation on the prices of like products in the market of the Member State the competent authority of which is conducting the investigation and on national manufacturers of like products.

64. In the analysis of the volume of importation of subsidised goods, the competent authority shall determine whether there has been an increase in the importation of subsidised goods (in absolute terms or relative to the manufacture or consumption of like products in the Member State the competent authority of which is conducting the investigation).

65. When analysing the impact of the importation of subsidised goods on the prices of like products in the market of the Member State the competent authority of which is conducting the investigation, the competent authority shall determine:

1) whether the prices of subsidised goods were lower than the prices of like products in the market of that Member State;

2) whether the importation of subsidised goods resulted in a reduction of prices of like products in the market of that Member State;

3) whether the importation of subsidised goods prevented the increase in prices of like products in the market of that Member States, which would have occurred in the absence of such importation.

66. The analysis of the impact of the subsidised importation of goods on the sector of the national economy shall represent an assessment of economic factors relevant to the state of the sector of the national economy, including:

1) previous or possible future reduction in the manufacture or sales of like products, its share in the market of the Member State the competent authority of which is conducting the investigation, profits, productivity, income from attracted investment or production capacity utilisation;

2) factors that affect the prices of like products in the market of the Member State the competent authority of which is conducting the investigation;

3) previous or possible future negative impact on cash flows, the stock of like products, employment, wages, manufacture growth rates and the ability to attract investment.

67. The impact of the importation of subsidised goods on the sector of the national economy shall be evaluated with regard to the manufacture of like products in the Member State the competent authority of which is conducting the investigation, if the available data allow allocating the manufacture of like products on the basis of such criteria as the production process, sales of the products by their manufacturers and profits. If the available data do not allow identifying the manufacture of like products, the impact of the importation of subsidised goods on the sector of the national economy shall be evaluated with regard to the manufacture of the narrowest group or range of goods comprising the like products and for which the required data are available.

68. The existence of any damage to the sector of the national economy as a result of the importation of subsidised goods shall be determined based on an analysis of all relevant evidence and information available at the disposal of the competent authority. The competent authority shall analyse, among other things, the dynamics and impact of import supplies of like products into the customs territory of the Union and supplies from other Member States. Neither one nor several factors determined in the course of the analysis of the volume of the importation of subsidised goods and of the impact of such importation on the sector of the national economy shall be

critical for determining the damage to the sector of the national economy as a result of the importation of subsidised goods. In addition to the importation of subsidised goods, the competent authority shall analyse other known factors causing damage to the sector of the national economy during the same period. The aforementioned damage shall not be regarded by the competent authority as the damage to the sector of the national economy as a result of the importation of subsidised goods.

69. When determining the existence of a threat of material injury to a sector of the national economy as a result of importation of subsidised goods, the competent authority shall take into account all available factors, including the following:

- 1) the nature and amount of a subsidy or subsidies and their possible impact on trade;
- 2) the growth rate of importation of subsidised goods indicating a real opportunity of further increase in such importation;
- 3) whether the manufacturers of subsidised goods in the subsidising Member State have sufficient opportunities to increase the import of subsidised goods or whether an increase in such opportunities is apparently inevitable;
- 4) the level of prices of subsidised goods, if this price level may lead to a reduction or regulation of the price of like products in the market of the Member State the competent authority of which is conducting the investigation and to further growth in demand for subsidised goods;
- 5) stocks of subsidised goods available to the manufacturer.

70. Neither one nor several factors specified in paragraph 69 of this Protocol shall be critical for determining a threat of a material injury to the

sector of the national economy caused by the importation of subsidised goods.

71. The decision on the existence of a threat of material injury to a sector of the national economy shall be adopted if, during the investigation based on the analysis of the factors referred to in paragraph 69 of this Protocol, the competent authority determines the inevitability of the continuation of the importation of subsidised goods and material injury caused by such importation to the sector of the national economy in the absence of a compensatory measure.

72. Interested persons in the investigation shall include:

1) the national manufacturer of like products, the national association of manufacturers most of the participants of which are manufacturers of like products;

2) the manufacturer of the subsidised goods under investigation, the association of manufacturers of such subsidised goods the majority of the participants of which are the manufacturers of such goods;

3) the subsidising Member State and/or the authorised authority of the subsidising Member State;

4) public consumer associations (if the subsidised goods under investigation are consumed mainly by natural persons);

5) consumers of the subsidised goods under investigation (using the products in the manufacturing process) and associations of such consumers.

73. The interested persons referred to in paragraph 72 of this Protocol shall operate during the investigation either independently or through their representatives duly authorised under the legislation of the Member State the competent authority of which is conducting the investigation.

If in the course of the investigation an interested person acts through an authorised representative, the competent authority shall submit all information on the subject matter of the investigation to the interested person only through this representative.

74. Information provided by an interested person to the competent authority shall be deemed confidential if such person indicates the reasons confirming that disclosure of such information will provide a competitive advantage to a third person or entail adverse consequences for the person submitting such information or to the person from whom the information was obtained. Confidential information shall not be disclosed without the permission of the submitting interested person, except in cases provided for by the legislation of the Member States.

The competent authority shall be entitled to request from each interested person having submitted confidential information its non-confidential version. The non-confidential version shall be sufficiently detailed for understanding the essence of the confidential information submitted. If in response to the above request an interested person claims that confidential information may not be presented in a non-confidential form, this person shall have to provide appropriate reasons.

If the competent authority establishes that the reasons provided by the interested person are insufficient for regarding the information as confidential or if the interested person that failed to submit a non-confidential version of the confidential information does not submit the appropriate reasons or submits information that does not constitute such a reasons, the competent authority may disregard this information.

75. The competent authority shall be bear liability for the disclosure of confidential information provided for by the legislation of its Member State.

VI. General Exceptions

76. Nothing in this Protocol shall be construed as:

1) requiring any Member State to provide any information the disclosure of which is considered by such state as contrary to its essential security interests;

2) preventing any Member State from taking any action it deems necessary to protect its essential security interests:

actions in relation to fissionable materials or their source materials;

actions for the development, manufacture and trade in weapons, ammunition and military materials, as well as other goods and materials, carried out, directly or indirectly, for the purpose of supplying a military establishment;

any action taken in time of war or other emergency in international relations;

3) preventing any Member State from taking any action in pursuance of its obligations under the Charter of the United Nations to preserve the world peace and international security.

77. The provisions of this Protocol shall not prevent the Member States from using specific subsidies that distort trade if such subsidies are introduced in exceptional circumstances (provided that the purpose of these measures is not to limit the importation of goods from the territory of other

Member States and such measures are non-discriminatory) and if their introduction is required to protect:

- 1) public morality, public law and order and national security;
- 2) life or health of people, animals and plants;
- 3) national treasures of artistic, historic or archaeological value;
- 4) intellectual property rights;
- 5) exhaustible natural resources (if such measures are taken in conjunction with restrictions on domestic production or consumption).

VII . Specific subsidies the provision of which does not constitute grounds for adopting compensatory measures

78. The provision of such a specific subsidy as support for research activities carried out by economic entities, as well as universities and research institutions on a contractual basis with economic entities, shall not be regarded as the grounds for the introduction of any compensatory measures, provided that such support covers not more than 75 percent of the cost of industrial research or 50 percent of the cost of developments at the pre-competitive stage and that it is provided solely to cover:

- 1) personnel costs (for researchers, technicians and other support personnel engaged solely in the research activities);
- 2) the cost of tools, equipment, land and buildings used exclusively and permanently for the research activities (except for sale on a commercial basis);
- 3) the cost of advisory and equivalent services used exclusively for the research activities (including the purchase of research results, technical knowledge, patents, etc.);

4) additional overhead costs incurred directly as a result of the research activities;

5) other current expenses (for materials, software, etc.) incurred directly as a result of the research activities.

79. For the purposes of this Section, industrial research activities shall refer to any planned research or critical studies aimed at discovery of new knowledge in the hope that such knowledge may be useful in developing new goods, processes or services, as well as for the significant improvement of existing goods, processes or services.

Developments at the pre-competitive stage shall refer to conversion of the results of industrial research into a plan, drawing or layout of new, modified or improved goods, processes or services intended for the sale or use (including the creation of the first prototype unsuitable for commercial use). These developments may also include the formulation of the concept and design of alternative goods, methods or services, as well as initial pilot or demonstration designs, provided that they may not be adapted or applied for industrial or commercial use. These developments shall not include current and periodic changes to existing goods, production lines, treatment processes, services, and other common operations, even if such changes lead to improvements.

80. The acceptable level of support specified in paragraph 78 of this Protocol that does not constitute grounds for the adoption of compensatory measures shall be determined in relation to the total relevant costs incurred over the period of implementation of the respective specific project.

In the case of implementation of programmes combining industrial research and pre-competitive stage developments, the permissible level of

support that does not constitute grounds for the adoption of measures shall not be higher than the arithmetic mean value of the permissible levels for these two categories calculated taking into account all costs referred to in paragraph 78 of this Protocol.

81. The provisions of this Protocol shall not apply to fundamental scientific research conducted by higher educational institutions or research institutions independently. Fundamental scientific research shall refer to the expansion of common scientific and technical knowledge not associated with any industrial or commercial purposes.

82. Support to disadvantaged regions on the territory of a Member State provided as part of the general regional development shall be non-specific (subject to the provisions of section II of this Protocol) and shall be distributed between the respective regions, provided that:

1) each disadvantaged area represents a clearly demarcated and compact administrative and economic zone;

2) such region is deemed disadvantaged based on neutral and objective criteria indicating that the region's difficulties arise not only due to temporary circumstances (such criteria shall be clearly specified in the laws, regulations or other official documents so that they can be verified);

3) the criteria referred to in sub-paragraph 2 of this paragraph shall include the measurement of economic development based on at least one of the following parameters measured for a 3-year period (such measurement may be complex and may take into account other factors):

income per capita or per household or the gross domestic product per capita, which shall not exceed 85 percent of the average rate for the territory concerned;

the unemployment rate, which shall be at least 110 percent of the average rate for this area.

83. The general regional development shall refer to regional subsidy programmes forming part of an internally consistent and universally applicable regional development policy, implying non-provision of regional development subsidies to individual geographical locations which produce no or almost no impact on the development of the region.

The neutral and objective criteria shall refer to criteria that do not provide benefits to certain regions beyond those required to eliminate or reduce the differences between regions within the regional development policy. In this regard, regional subsidy programmes shall include the maximum amounts of support that may be provided under each subsidised project. These maximum amounts shall be differentiated according to the level of development of the regions supported and shall be expressed in the form of spending on investment or job creation. Within these amounts, the support shall be distributed widely enough to avoid pre-emptive use of subsidies or provision of disproportionately large amounts to certain enterprises in accordance with Section II of this Protocol.

84. The support of adaptation of existing production capacities (representing production capacities in operation for at least 2 years prior to the introduction of new requirements for environmental protection) to the new requirements for environmental protection imposed by the legislation and/or regulations and entailing additional restrictions and increased financial burden for economic entities shall not be regarded as grounds for any compensatory measures, provided that such support:

- 1) is a one-time, non-recurring measure;

- 2) amounts to no more than 20 percent of the costs of adaptation;
- 3) does not cover the cost of replacement and operation of subsidised equipment to be borne by the enterprise;
- 4) is directly related and proportionate to the pollution reduction planned by an economic entity and does not cover the production costs savings that may be achieved;
- 5) is available for all economic entities that may convert to new equipment and/or production processes.

VIII. Introduction and Application of compensatory Measures and Response Measures

85. The competent authority of a Member State shall be entitled to conduct an investigation with regard to the compliance of subsidies provided on the territories of other Member States with the provisions of this Protocol or an investigation into the use by other Member States of the measures referred to in paragraph 11 of this Protocol, in accordance with the procedure determined by section V of this Protocol. The competent authority having initiated an investigation shall inform the Member States of the commencement of the investigation. The competent authorities shall have the right to request the necessary information on the progress of the investigation.

86. If, as a result of an investigation, the competent authority of a Member State establishes that the subsidising authority of another Member State provides a specific subsidy and this specific subsidy causes damage to a sector of the national economy of the Member State the competent authority of which is conducting the investigation, such competent authority may send

to the subsidising Member State an application for the adoption of compensatory measures. This application shall contain evidence of non-compliance of the subsidy with the provisions of this Protocol.

87. If, at the end of the proceedings conducted in accordance with paragraph 6 of this Protocol, the Commission confirms the existence of damage to a sector of the national economy of one of the Member States, the competent authority of the Member State shall be entitled to send to the subsidising Member State an application for the adoption of a compensatory measure. This application shall contain evidence of non-compliance of the subsidy in accordance with sub-paragraph 3 of paragraph 6 of Article 93 of the Treaty.

The Member States shall not apply compensatory measures to subsidies approved by the Commission in accordance with paragraph 6 of this Protocol.

The provisions of this paragraph shall be applied subject to the transitional provisions stipulated in paragraph 1 of Article 105 of the Treaty.

88. An application for countervailing measures may be voluntarily granted by a Member State that has received such application within a period not exceeding 2 months or based on the results of the settlement of disputes.

89. A Member State having received an application for the adoption of countervailing measures, the validity of which has been recognised voluntarily by the Member State or based on the results of the settlement of disputes in accordance with Article 93 of the Treaty, shall introduce the countervailing measure stated in the application within 30 calendar days.

90. The countervailing measure introduced under paragraph 89 of this Protocol shall represent a sum of the subsidy provided and interest accrued

on the amount of the subsidy for the entire period of use of these funds (assets), as specified in the application for the adoption of the countervailing measure.

The amount of the subsidy shall be calculated in accordance with this Protocol.

The interest rate shall be equal to one and a half refinancing rate prevailing on the date of provision of the subsidy and set by the national (central) bank of the subsidising Member State. The interest rate shall be calculated by applying the compound interest for the entire period from the date of provision of the subsidy to the date of implementation of the countervailing measure.

The compound interest is interest charged each year with regard to an amount including the interest accrued in the previous year.

91. A countervailing measure shall be deemed implemented after the amount of the subsidy, including all relevant interest amounts, has been withdrawn from the recipient of the subsidy and transferred to the budget of the subsidising Member State.

92. A countervailing measure shall be deemed non-implemented if it is charged from any sources other than those specified in paragraph 91 of this Protocol.

By mutual agreement of the claimant state and the respondent state and solely in order to avoid circumvention of payment by the recipient of the subsidy of the funds constituting a countervailing measure, the sources of levying the countervailing measure may be changed.

93. Implementation of a countervailing measure shall constitute sufficient grounds for the granted application for the adoption of

countervailing measures to be deemed executed. In this case, the Member State shall execute such application within a period not exceeding 1 calendar year from the date of accepting such application.

94. If the Member State fails to execute the granted application for the adoption of a countervailing measure within the determined time limit, the applying Member State shall be entitled to take response measures, which shall be approximately proportional to the countervailing measure.

For the purposes of this Protocol, a response measure shall refer to temporary suspension by the Member State introducing such response measure of its obligations in respect of the Member State against which the response measure is introduced under any existing trade and economic treaties (except for those related to the oil and gas industry).

Response measures shall be temporary and shall be applied by the claimant state only until the measure violating the provisions of the Treaty is cancelled or changed in such a way as to comply with the provisions of the Treaty or until the Member States agree otherwise.

IX. Notices

95. The Member States (authorised authorities of the Member States) shall annually, but not later than December 1, notify each other and the Commission of all subsidies planned for the provision in the next year, at the federal (national) and regional (municipal, local) levels.

The Member States shall not subsume the information on provided subsidies to confidential information, except in cases stipulated in paragraph 76 of this Protocol.

96. The sources of the information for the notices sent pursuant to paragraph 95 of this Protocol shall be cost-related parts of draft federal/national budgets and budgets of administrative-territorial entities.

97. The Member States (authorised authorities of the Member States) shall, on a quarterly basis and no later than on the 30th day of the month following the reporting quarter, send to each other and to the Commission notices in the determined form of all subsidies provided at the federal (national) and regional (municipal, local) levels in the reporting quarter.

The provisions of this paragraph shall be applied subject to the transitional provisions stipulated in paragraph 1 of Article 105 of the Treaty.

98. The Member States (authorised authorities of the Member States) shall, annually and no later than on July, 1 of the year following the reporting year, send to each other and to the Commission notices in the determined form of all subsidies provided at the federal (national) and regional (municipal, local) levels in the reporting year. These notices shall contain sufficient information for the competent authority of another Member State and the Commission to estimate the amount of subsidies provided and their compliance with the provisions of this Protocol.

99. The forms of the notices of subsidies of the Member States (competent authorities of the Member States) provided for by this section, as well as the procedure for their completion, shall be approved by the Commission in consultation with the Member States.

100. The notices on subsidies shall contain the following information:

1) the name of the subsidy programme (if any) and a brief description or identification of the subsidy (for example, “Development of Small Business”);

2) the reporting period for the notice;

3) the main purpose and/or purpose of the subsidy (information on the purpose of the subsidy is normally contained in the regulatory legal act under which the subsidy is provided);

4) the basis for the provision of the subsidy (the name of the regulatory legal act under which the subsidy is provided, as well as a brief description of this act);

5) the form of the subsidy (grant, loan, tax exemption, etc.);

6) the subject (manufacturer, exporter or other person) and the method of provision of the subsidy (funds used to provide the subsidy, fixed or variable amount per unit of goods (in the latter case, indicating the mechanism for determining the amount)), as well as the mechanism and conditions for the provision of the subsidy;

7) the amount of the subsidy (the annual or total amount allocated for the subsidy, if possible, the subsidy per unit of products);

8) the duration of the subsidy and/or any other time limit applicable to the subsidy (including the opening (completion) date of the subsidy);

9) the data on the effects on trade (statistical data allowing to assess the trade effects of the subsidy);

101. The information referred to in paragraph 100 of this Protocol shall, to the extent possible, contain statistical data on the manufacture, consumption, import and export of subsidised goods or sectors:

1) for the recent 3 years for which statistical data are available;

2) for the year preceding the introduction of the subsidy or the most recent major change in the subsidy.

Annex
to the Protocol on the Common
Rules for the
Provision of Industrial Subsidies

**List of measures not subject to the provisions of the Protocol on
the Common Rules for the Provision of Industrial Subsidies**

Measure	Transitional period for the measure
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I. The Republic of Belarus

Measures relating to investment agreements concluded in accordance with Presidential Decree No.175 of April 4, 2009 On Measures to Develop the Manufacture of Passenger Cars and the Decision No.130 of the Commission of the Customs Union of November 27, 2009 On Common Customs Tariff Regulation of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation*	up to December 31, 2020, unless otherwise provided for by the protocol of accession of the Republic of Belarus to the World Trade Organisation
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II. The Republic of Kazakhstan

1. Interest rate subsidies on bank loans in export-oriented industries in accordance with Resolution No.301 of the Government of the Republic of Kazakhstan of April 13, 2010 On approval of the Programme “Business Road Map 2020”,	up to July 1, 2016, for loans issued by lending institutions before July 1, 2011
2. Exemption of goods deemed to originate in the Republic of Kazakhstan based on the sufficient processing criteria from customs duties and taxes when exported from the territory of a free warehouse to the rest of the customs territory of the Customs Union in accordance with Code No.99-I of the Republic of Kazakhstan of December 10, 2008 On Taxes and Other Obligatory Payments to the Budget (the Tax Code), Resolution No.1647 of	up to January 1, 2017

Measure	Transitional period for the measure
the Government of the Republic of Kazakhstan of October 22, 2009 On Approval of the Rules of Origin, Compilation and Issuance of the Certificate of Examination of Origin and Compilation, Certification and Issuance of the Certificate of Origin, and the Agreement on Free Warehouses and the Customs Procedure of a Free Warehouse of June 18, 2010	
3. Exemption of goods deemed to originate in the Republic of Kazakhstan based on the sufficient processing criteria from customs duties and taxes when exported from the territory of special economic zones into the rest of the customs territory of the Customs Union in accordance with the Agreement on Free (Special) Economic Zones on the Customs Territory of the Customs Union and the Customs Procedure of a Free Customs Zone of June 18, 2010, Law No.469-IV of the Republic of Kazakhstan of July 21, 2011, On Special Economic Zones in the Republic of Kazakhstan, and Resolution No.1647 of the Government of the Republic of Kazakhstan of October 22, 2009, On Approval of the Rules of Origin, Compilation and Issuance of the Certificate of Examination of Origin and Compilation, Certification and Issuance of the Certificate of Origin	up to January 1, 2017
4. Measures in respect of investment agreements concluded in accordance with Order No.113 of the Ministry of Industry and Trade of the Republic of Kazakhstan of June 11, 2010 On certain issues of conclusion, terms and the standard form of the Agreement on industrial assembly of motor vehicles with juridical persons that are residents of the Republic of Kazakhstan, and Decision No.130 of the Commission of the Customs Union of November 27, 2009 On Common Customs Tariff Regulation of the Customs Union of the Republic of Belarus, the Republic of	up to December 31, 2020, unless otherwise provided for by the protocol of accession of the Republic of Kazakhstan to the World Trade Organisation

Measure	Transitional period for the measure
Kazakhstan and the Russian Federation*	
5. The local content in subsoil use contracts between the Government of the Republic of Kazakhstan and a subsoil user concluded before 1 January 2015 pursuant to Law No.291-IV of the Republic of Kazakhstan of June 24, 2010, On Subsoil and Subsoil Use	up to January 1, 2023, unless otherwise provided for by the protocol of accession of the Republic of Kazakhstan to the World Trade Organisation
6. The local content in procurement made by Samruk-Kazyna National Welfare Fund (NWF) and organisations, in which 50 percent or more of the voting shares (participation interests) are directly or indirectly owned by Samruk-Kazyna, as well as companies directly or indirectly owned by the state (with the state share amounting to 50 percent or more), in accordance with Law No.550-IV of the Republic of Kazakhstan of February 1, 2012 On the National Welfare Fund, and Resolution No.787 of the Government of the Republic of Kazakhstan of May 28, 2009, On Approval of Model Regulations on procurement of goods, works and services provided by the national management holding, national holdings, national companies and organisations in which fifty and more percent of shares (participation interests) or more are directly or indirectly owned by the national management holding, national holdings or national companies.	up to January 1, 2016, unless otherwise provided for by the protocol of accession of the Republic of Kazakhstan to the World Trade Organisation

III. The Russian Federation

1. Measures regarding investment agreements concluded before February 28, 2011, including provisions of Presidential Decree No.135 of the Russian Federation of February 5, 1998, On Additional Measures to Attract Investment for the Development of the Domestic Automotive Industry, Resolution No.166 of the Government of the Russian Federation of March 29, 2005, On Amendments to the Customs Tariff of the Russian Federation in respect of Automotive Components Imported for Industrial Assembly, Decision No.130 of	the transitional period shall correspond to the term of the agreements specified at their signature and may be extended for a period provided for by the Protocol of December 16, 2011 on Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organisation of April 15, 1994, but may not exceed 2 calendar years
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Measure	Transitional period for the measure
the Commission of the Customs Union of November 27, 2009 On Common Customs Tariff Regulation of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation*	
2. Measures applied in accordance with Federal Law No.16-FZ of January 10, 2006 On the Special Economic Zone in the Kaliningrad Region and on Amendments to Certain Legislative Acts of the Russian Federation	up to April 1, 2016

*To be applied subject to the conditions for the application of concept of
'industrial assembly of motor vehicles' approved by the Supreme Council on the
territories of the Member States.
