ANNEX 8
to the Treaty on the Eurasian
Economic Union

PROTOCOL
on the Application of Safeguard, Anti-Dumping and Countervailing Measures to Third Countries

I. General Provisions

1. This Protocol has been developed in accordance with Articles 48 and 49 of the Treaty on the Eurasian Economic Union (hereinafter "the Treaty") and lays down provisions pertinent to the application of safeguard, anti-dumping and countervailing measures to third countries with a view to defend economic interests of producers in the Union.

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

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

"anti-dumping measure" means a measure to offset the dumped imports that is applied pursuant to the decision of the Commission through the imposition of the anti-dumping duty, including provisional anti-dumping duty, or the approval of the price undertakings accepted by the exporter;

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

“dumping margin” means the percentage ratio of the normal value of the product deducting export price of the product to the export price or the difference between the normal value of the product and its export price in absolute terms;

“import quota” means a restriction to imports of the product to the customs territory of the Union with respect to the quantity and (or) value;

“countervailing measure” means a measure to offset the effect of the specific subsidy of the exporting third country on the domestic industry of the Member States that is applied pursuant to the decision of the Commission through the imposition of the countervailing duty, including the provisional countervailing duty, or the approval of the price undertakings accepted by the competent authorities of the third country granting the subsidy or the exporter;

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

“material injury to the domestic industry of the Member States” means confirmed by positive evidence deterioration in the position of the domestic industry of the Member States, which may be expressed, in particular, in decline in production of the like product in the Member States and the sales in the market of the Member States, in decline in profitability, as well as in negative effect on the inventories, employment, wages, and the level of investment into the domestic industry of the Member States;

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

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

“payers” means persons defined in accordance with the Customs Code of the Eurasian Economic Union;

“provisional anti-dumping duty” means a duty applied on imports to the customs territory of the Union of the product subject to investigation in relation to which during the course of the investigation the investigating authority has made a preliminary determination on dumped imports that causes material injury to the domestic industry of the Member States, threatens to cause material injury or materially retards the establishment of the domestic industry of the Member States;

“provisional countervailing duty” means a duty applied on imports to the customs territory of the Union of the product subject to investigation in relation to which during the course of the investigation the investigating authority has made a preliminary determination on subsidized imports that causes material injury to the domestic industry of the Member States, threatens to cause material injury or materially retards the establishment of the domestic industry of the Member States;

“provisional safeguard duty” means a duty applied on imports to the customs territory of the Union of the product subject to investigation in relation to which during the course of the investigation the investigating authority has made a preliminary determination on increased imports that causes or threatens to cause serious injury to the industry of the Member States;

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

“related parties” means persons that meet one or more of the following criteria:

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

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

persons are employers and employees of one organisation;

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

one of them directly or indirectly controls the other;

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

together they directly or indirectly control a third person;

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

The direct control is understood as the possibility of the juridical person or natural person to determine the decisions made by the juridical person through one or more of the following actions:

exercising of the functions of its executive body;

receiving the right to determine the conditions of the entrepreneurial activity of the juridical person;

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

The indirect control is understood as the possibility of the juridical person or natural person to determine the decisions made by the juridical person through the juridical person or natural person or through a number of juridical persons between which there is a direct control.

“serious injury to the domestic industry of the Member States” means confirmed by positive evidence overall impairment in the situation related to production of the like or directly competitive product in the Member States that is expressed in significant impairment in the industrial, commercial and financial position of the industry of the Member States and is determined as a general principle for the previous period;

“safeguard measure” means measure to offset the increased imports to the customs territory of the Union that is applied pursuant to the decision of the Commission through the imposition of the import quota, safeguard quota or safeguard duty, including provisional safeguard duty;

“safeguard quota” means fixing of a particular volume of imports of a product entering to the customs territory of the Union, within which the product enters to the customs territory of the Union without the payment of the safeguard duty and above which – with the payment of the safeguard duty;

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

“subsidized imports” means imports of the product into the customs territory of the Union in production, export and transportation of which the specific subsidy of the exporting third country was used;

“third countries” means countries and (or) groups of countries that are not the Members of the Union, as well as the territories included into the classification of the countries of the world that is approved by the Commission;

“granting authority” means a government authority or a local government authority of the exporting third country or a person who acts pursuant to the instruction of the relevant government authority or a local government authority or authorised by the relevant government authority or local government authority in accordance with a legal act or based upon factual circumstances;

“threat of material injury to the domestic industry of the Member States” means confirmed by positive evidence imminence of material injury to the domestic industry of the Member States;

“threat of serious injury to the domestic industry of the Member States” means confirmed by positive evidence imminence of serious injury to the domestic industry of the Member States;

“export price” means a price that is paid or shall be paid, when importing a product into the customs territory of the Union.

II. Investigation

1. Investigation Objectives

3. Safeguard, anti-dumping or countervailing measure on imports of a product may only be imposed pursuant to investigations conducted to determine:

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

the existence of dumped or subsidized imports into the customs territory of the Union that causes or threatens to cause material injury to the domestic industry of the Member States or materially retards the establishment of the domestic industry of the Member States.

2. Investigating Authority

4. Investigating authority acts within its powers delegated by international treaties and acts constituting the law of the Union.

5. As a result of the investigation investigating authority presents the report to the Commission that contains a proposal on application or prolongation of the period of application of safeguard, anti-dumping or countervailing measure or review or suspension of safeguard, anti-dumping

or countervailing measure with the draft of a relevant decision of the Commission.

6. Review of the safeguard, anti-dumping or countervailing measure provides for its modification, suspension or liberalization as a result of the review.

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

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

III. Safeguard Measures

1. General Principles of Application of a Safeguard Measure

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

1) product originating in a developing or a least developed third country using the common system of tariff preferences of the Union as long as the share of imports of the product subject to investigation from this country does not exceed 3 percent of total imports of the product subject to investigation into the customs territory of the Union, provided that the total

share of imports from developing and least developed countries, which individual share of imports of the product subject to investigation does not exceed 3 percent of total imports of the product subject to investigation into the customs territory of the Union, collectively account for not more than 9 percent of total imports of the product subject to investigation into the customs territory of the Union;

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

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

11. The Commission takes a decision on the extension of the safeguard measure to a product originating in a Participating State of Commonwealth of Independent States, which is a party to the Treaty on a Free Trade Area of October 18, 2011 and excluded from the application of a safeguard measure in accordance with paragraph 9 of this Protocol in case if, pursuant to a review conducted by the investigating authority in accordance with paragraphs 31, 33 or 34 of this Protocol, it is determined that the conditions

specified in Article 8 of the Treaty on a Free Trade Area of October 18, 2011 are no longer fulfilling.

2. Determination of serious injury or threat thereof to the domestic industry of the Member States caused by increased imports

12. For the purpose of determination of serious injury or threat thereof to the domestic industry of the Member States caused by the increased imports into the customs territory of the Union the investigating authority in the course of the investigation evaluates all objective factors of quantifiable nature that the economic situation of the domestic industry of the Member States, including the following:

1) the rate and amount of the increase in imports of the product subject to investigation in absolute and relative terms to domestic production or consumption of like or directly competitive product in the Member States;

2) the share of the imported product subject to investigation in the total sales of this product and like or directly competitive product in the market of the Member States;

3) the level of prices for the imported product subject to investigation in comparison with the level of prices for like or directly competitive product produced in the Member States;

4) changes in the level of sales of like or directly competitive product produced in the Member States on the market of Member States;

5) changes in the volume of production of like or directly competitive product, productivity, capacity utilization, amount of profits and losses, and employment in the domestic industry of Member States.

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

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

3. Imposition of a Provisional Safeguard Duty

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

16. The investigating authority notifies in writing the competent authority of the exporting third country as well as other interested parties known to it about the possible imposition of a provisional safeguard duty.

17. At the request of the competent authority of the exporting third country to hold consultations on the imposition of provisional safeguard duty such consultations shall be initiated after the decision to apply a provisional

safeguard duty is taken by the Commission.

18. In cases where as a result of the investigation the investigating authority determined that there are no grounds for the imposition of safeguard measure or the decision on non-application of the safeguard measure in accordance with paragraph 272 of this Protocol was taken, the amount of provisional safeguard duty shall be refunded to the payer in a manner specified in the Annex to this Protocol.

The investigating authority timely informs the customs authorities of the Member States on the absence of grounds for the imposition of the safeguard measure, or on the decision on non-application taken by the Commission.

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

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

The amounts of provisional safeguard duty that exceed the amount of a definitive safeguard duty shall be refunded to a payer in accordance with the procedure specified in the Annex to this Protocol.

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

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

4. Application of Safeguard Measure

23. Safeguard measure is applied by the decision of the Commission in the amount and within the time period necessary to prevent or remedy serious injury or threat thereof to the domestic industry of the Member States, and to facilitate the adjustment of the domestic industry of the Member States to the changing economic conditions.

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

25. In cases in which a quota is allocated among exporting third countries, those of them that are interested in supplying the product subject to investigation into the customs territory of the Union shall be provided an opportunity to hold consultations on the allocation of import quota among them.

26. In cases where the of consultations provided for in paragraph 25 of this Protocol is not practicable or in the course of consultation an agreement on such an allocation was not reached, import quota shall be allocated among exporting third countries having an interest in exporting the product subject to investigation into the customs territory of the Union in proportions of this product supplied by such third countries during the previous period, on the basis of the total quantity or value of imports of such product into the customs territory of the Union.

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

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

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

28. Procedure of application of a safeguard measure in the form of the import quota shall be determined by the Commission. If such decision provides for licensing of imports, licenses shall be issued in the manner specified by the article 46 of the Treaty.

29. In cases where safeguard measure is applied in the form of

safeguard quota, volume, allocation and application of such quota shall be made in the manner specified for import quota in the paragraphs 24-28 of this Protocol.

5. Duration and Review of Safeguard Measure

30. The period of application of a safeguard measure shall not exceed 4 years, unless it is extended in accordance with paragraph 31 of this Protocol.

31. The period of application of a safeguard measure specified in paragraph 30 of this Protocol may be extended by the decision of the Commission provided that pursuant to a review conducted by the investigating authority it is determined that it is necessary to extend the application of a safeguard measure to prevent or remedy serious injury or threat thereof and that there is evidence that the industry of the Member States is adjusting to the changing economic conditions.

32. When the Commission takes a decision on extension of the safeguard measure, such safeguard measure shall not be more restrictive than the safeguard measure that was in force on the date when this decision was taken.

33. In case when the duration of the safeguard measure exceeds 1 year, the Commission shall progressively liberalize it at regular intervals during the period of application.

If the duration of the safeguard measure exceeds three years, not later than the mid-term of the measure, the investigating authority shall conduct a review pursuant to which the safeguard measure may be maintained, liberalized or withdrawn.

For the purpose of this paragraph, liberalization of a safeguard measure means an increase in the volume of import quota or safeguard quota, or a reduction of safeguard duty rate.

34. Without prejudice to the provisions on review specified in the paragraph 33 of this Protocol, on the initiative of the investigating authority or upon request of an interested party, review can be conducted in order to:

1) determine the need to modify, liberalize or withdraw the safeguard measure due to changed circumstances, including clarification of the product subject to the safeguard measure if there is a reason to assume that such a product cannot be produced in the Union in course of application of this safeguard measure;

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

3) determine the fact of fulfilling the conditions specified in Article 8 of the Treaty on a Free Trade Area of October 18, 2011 for a Participating State of Commonwealth of Independent States, which is a party to the Treaty on a Free Trade Area of October 18, 2011.

35. Request for review for the purposes specified in the subparagraph 1 of the paragraph 34 of this Protocol can be accepted by the investigating authority provided that at least 1 year has elapsed since the imposition of the safeguard measure.

36. The provisions regarding the conduction of investigations shall be applied mutatis mutandis to the reviews.

37. The total period of application of a safeguard measure, including the period of application of a provisional safeguard duty, and any extension of the safeguard measure shall not exceed 8 years.

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

39. Safeguard measure, the duration of which is 180 calendar days or less, regardless of provisions set by the paragraph 38 of this Protocol, may be applied again for the same product, if at least 1 year has elapsed since the date of introduction of previous safeguard measure and safeguard measure has not been applied for the same product more than twice in the five-year period preceding the date of introduction of new safeguard measure.

IV. Anti-dumping Measures

1. General Principles of Application of an Anti-dumping Measure

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

41. The period of investigation for the examination of data to determine the existence of dumped imports is established by the investigating authority. Such period is established normally equal to 12 months preceding the date of filing of the application for investigation and for which the statistical data is available but in any case this period shall not be less than 6 months.

2. Determination of the Margin of Dumping

42. The margin of dumping is determined by the investigating authority on the basis of comparison of:

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

2) normal value of the product in individual transactions and prices of individual export transactions;

3) weighted average normal value of the product and prices of individual export transactions provided that there are significant differences in prices of the product among purchasers, regions or time periods.

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

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

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

45. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting third country or in case of low volume of the sales in the domestic market of the exporting third country or when, because of the particular market situation, such sales do not permit a proper comparison of export price of the product and the price of the like

product sold in the market of exporting third country, export price of the product is compared either with a comparable price of the like product imported from the exporting third country to another third country, provided that the price of the like product is representative, or with the cost of production in the country of origin plus a necessary amount for administrative, selling and general costs and for profits.

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

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

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

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

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

48. The investigating authority, as a rule, determines an individual

margin of dumping for each known exporter and/or producer of the product, that have provided necessary information, which allows to determine an individual margin of dumping.

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

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

In the case where the investigating authority uses the limitation in accordance with this paragraph, it also determines an individual margin of dumping in relation to each foreign exporter or foreign producer, which initially had not been chosen by the investigating authority, but provided necessary information that allows to determine an individual margin of dumping in time for that information to be considered, except where a number of foreign exporters and/or foreign producers is so large that individual examination may prevent the timely completion of the investigation by the investigating authority.

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

50. In the case where the investigating authority uses the limitation, as provided in paragraph 49 of this Protocol, to determine an individual margin of dumping, the margin of dumping, calculated in relation to the foreign exporters or foreign producers of the dumped product, that have not been selected but have submitted necessary information within the established time period, shall not exceed the weighted average margin of dumping determined in relation to foreign exporters or foreign producers of the dumped product, that have been selected for the determination of an individual margin of dumping.

51. If the exporters or producers of the dumped product do not submit requested type of information to the investigating authority within the established time period or submitted information is not verifiable or is inaccurate, the investigating authority may determine the margin of dumping on the basis of facts available.

52. Besides the determination of the individual margin of dumping for each known exporter and/or producer of the product that submitted necessary information that allows to determine individual margin of dumping, the investigating authority may determine a single margin of dumping for all other exporters and/or producers of dumped product based upon the highest dumping margin determined during the course of the investigation.

3. Determination of the Normal Value

53. The investigating authority shall determine normal value on the basis of prices for the like product sold during the period of investigation in

the domestic market of the exporting third country in the ordinary course of trade to the buyers, that are not related to the producers and exporters, which are residents of this third country, for the use on the customs territory of the exporting third country.

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

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

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

55. For the purposes of determination of the normal value for the product in accordance with paragraph 53 of this Protocol the price for the product sold to buyers in the domestic market of the exporting third country is the weighted average price of the like product sold during the period of investigation or the price for the product in individual transactions within this period.

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

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

58. Sales of the like product at prices below per unit cost of production plus administrative, selling and general costs is considered as made in substantial quantities in case where the weighted average price of transactions of the like product subject to investigation for the determination of the normal value is below the weighted average per unit cost of production of the like product plus administrative, selling and general costs or the volume of sales at prices below such per unit costs represents not less than 20 percent of the volume sold in transactions under consideration for the determination of the normal value.

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

principles and rules of the exporting third country and totally reflect the costs associated with the production and sale of the product.

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

61. Costs of production, administrative, selling and general costs are adjusted for non-recurring items, connected with the development of production, or for circumstances in which costs during the period of investigation are affected by start-up operations. Such adjustments shall reflect the costs at the end of the start-up period, or in case where the start-up period exceeds the period of investigation, at the most recent stage of the start-up period, that falls within the period of investigation.

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

1) the actual amounts incurred and realized by the exporter or producer of the product subject to investigation in respect of production and sales in the domestic market of the exporting third country of the same category of products;

2) the weighted average of the actual amounts incurred and realized by other exporters or producers of such a product in respect of production and sales of the like product in the domestic market of the exporting third country;

3) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same category in the domestic market of the exporting third country.

63. In case of the dumped imports from the exporting third country, in which the prices in the domestic market are directly regulated by the government or there is a government monopoly on foreign trade, normal value for the product may be determined on the basis of price or calculated value of the like product in an appropriate third country that is comparable for the purposes of the investigation with the exporting third country, or on the basis of the price for the like product that is sold from such a third country for export.

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

4. Determination of the Export Price

64. The export price for the product is determined on the basis of information on sales during the period of investigation.

65. In case when there is no information on export price for the dumped product, or when the investigating authority has reasonable doubts

concerning credibility of information on export price for this product because the exporter and the importer are related parties, including the relationship between each of them with the third party, or when there is a restrictive business practice in the form of compensatory arrangement in relation to the export price for such a product, export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition as imported into the customs territory of the Union, on such a basis as the investigating authority may determine. For the purposes of comparison of the export price for the product with its normal value allowances shall be made for costs, including customs duties and taxes, incurred between importation and resale, and for profits.

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

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

67. The injury to the domestic industry of the Member States caused by the dumped imports is determined on the basis of results of the examination of the volume of dumped imports and the effect of such imports on prices for the like product in the domestic market of the Member States and on domestic producers of the like product in the Member States.

68. The period of investigation, for which the evidence is examined

for the purposes of determination of injury to the domestic industry of the Member States due to dumped imports, is to be established by the investigating authority.

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

70. With regard to the examination of the effect of the dumped imports on prices of the like product the investigating authority shall determine whether:

1) the prices for the dumped product has been significantly lower than the prices for the like product in the market of the Member States;

2) the dumped imports depressed prices for the like product in the market of the Member States;

3) the dumped imports prevented the price increases for the like product in the market of the Member States, which would otherwise have occurred in the absence of such imports.

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

1) the margin of dumping established in relation to the imports from each exporting third country is more than de minimis, and the volume of imports from each exporting third country is not negligible, with due regard to the provisions of paragraph 223 of this Protocol;

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

72. The examination of the impact of the dumped imports on the domestic industry of the Member States consists in an evaluation of all economic factors related to the state of the domestic industry of the Member States, including:

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

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

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

the magnitude of the margin of dumping;

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

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

73. The conclusion on the causal link between the dumped imports and injury to the domestic industry of the Member States shall be based on the examination of all the relevant evidence and information available to the investigating authority.

74. Besides dumped imports, the investigating authority also examines all other known factors which at the same time are causing injury to the domestic industry of the Member States.

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

The injury caused by these other factors to the domestic industry of the Member States shall not be attributed to the injury caused by dumped imports.

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

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

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

1) a rate of increase of the dumped imports indicating the likelihood of further increased importation;

2) the capacity of the exporter to export the dumped product or evident imminence of the increase in export capacity, which indicates the likelihood of increased dumped imports of this product, taking into account the availability of other export markets to absorb any additional exports of this product;

3) the level of prices for the product subject to investigation, if such level of prices may have a depressing or supressing effect on domestic prices for the like product in the Member States, and would likely further increase demand for the product subject to investigation;

4) inventories of the product subject to investigation.

77. The determination of the threat of material injury to the domestic industry of the Member States is made in case where during the course of the investigation as a result of examination of factors, specified in paragraph 76 of this Protocol, the investigating authority concluded the imminence of continuation of dumped imports and the material injury to the domestic industry of the Member States caused by such imports in case of non-imposition of the anti-dumping measure.

6. Imposition of a Provisional Anti-dumping Duty

78. In case where the evidence, received by the investigating authority before the completion of the investigation, indicates the existence of dumped imports that causes injury to the domestic industry of the Member States, the Commission on the basis of the report, specified in paragraph 7 of this Protocol, adopts a decision on application of an anti-dumping measure

through the imposition of provisional anti-dumping duty to prevent injury to the domestic industry of the Member States that is caused by dumped imports during the period of investigation.

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

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

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

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

83. In case where the investigating authority as a result of the investigation establishes that there are no grounds for imposition of the anti-dumping measure, or the decision on non-imposition was adopted pursuant to paragraph 272 of this Protocol, the amounts of provisional anti-dumping duty are subject to refund to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority timely informs the customs authorities of the Member States on the absence of grounds for imposition of the anti-dumping measure, or on the decision on non-imposition adopted by the Commission.

84. In case where as a result of the investigation the decision on imposition of an anti-dumping measure is adopted on the basis of the threat of material injury to the domestic industry of the Member States or material retardation of the establishment of the domestic industry of the Member States, the amounts of the provisional anti-dumping duty are subject to refund to the payer in accordance with the procedure specified in the Annex to this Protocol.

85. In case where as a result of the investigation the decision on imposition of an anti-dumping measure is adopted on the basis of material injury to the domestic industry of the Member States or threat of material injury, provided that non-imposition of the provisional anti-dumping duty resulted in material injury to the domestic industry of the Member States, the amounts of provisional anti-dumping duties from the date of decision on imposition of the anti-dumping measure shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol, with due regard to the provisions of paragraphs 86 and 87 of this Protocol.

86. In case where as a result of the investigation it is considered reasonable to impose the anti-dumping duty at a rate less than the provisional anti-dumping duty, the amount of the provisional anti-dumping duty equal to the amount of a definitive anti-dumping duty shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

The amounts of provisional anti-dumping duty that exceed the amount of a definitive anti-dumping duty shall be subject to refund to a payer in accordance with the procedure specified in the Annex to this Protocol.

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

88. A provisional anti-dumping duty is applied, provided that the investigation continues simultaneously.

89. The decision on imposition of a provisional anti-dumping duty is adopted, as a rule, in not less than 7 months from the date of initiation of the investigation.

7. The Acceptance of Price Undertakings by the Exporter of the Product subject to Investigation

90. The investigating authority may suspend or terminate the investigation without the imposition of provisional anti-dumping duty or definitive anti-dumping duty upon receipt of price undertakings from an exporter of the product subject to investigation to revise its prices or to cease exports to the customs territory of the Union at prices less than its normal value (if there are parties related to an exporter in the Member States, the applications by these parties, that indicate their support of the undertakings, are also necessary), if the investigating authority concludes that the acceptance of the undertakings would be adequate to remove the injury to the domestic industry caused by dumped imports, and the Commission adopts a decision on their approval.

The level of prices for the product in accordance with the undertakings shall not be higher than necessary to eliminate the margin of dumping.

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

91. The decision to accept price undertakings shall not be adopted by the Commission until the investigating authority has made an affirmative provisional determination on the existence of dumped imports that causes injury to the domestic industry of the Member States.

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

To the extent possible, the investigating authority shall inform the exporters on the reasons which have led to consider acceptance of an undertaking as inappropriate, and shall give the exporter an opportunity to make comments thereon.

93. The investigating authority send to each exporter, that accepted price undertakings, a request to provide their non-confidential version of price undertakings to be able to provide it to interested parties.

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

95. In case where the Commission adopts a decision on approval of price undertakings, the anti-dumping investigation may be continued upon request of the exporter of the product or if the investigating authority so decides.

In case where as a result of the investigation the investigating authority makes a negative determination of dumping or injury to the domestic industry of the Member States, the price undertakings accepted by the exporter automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In case where such a determination is due in large part to the existence of a price undertaking the Commission may adopt a decision to require that such undertakings be maintained for a reasonable period of time.

96. In case where as a result of the investigation the investigating authority makes an affirmative determination on the existence of dumped imports that causes injury to the domestic industry of the Member States, the accepted price undertaking shall continue consistent with its terms and the provisions of this Protocol.

97. The investigating authority may require the exporter from whom an undertaking has been accepted to provide information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data.

The case when the exporter does not provide the requested information within the time period, established by the investigating authority, and does not permit verification of pertinent data is treated as a violation by the exporter of the accepted price undertakings.

98. In case of violation or withdrawal of price undertakings by the exporter the Commission may adopt a decision on application of the anti-dumping measure through the imposition of a provisional anti-dumping duty (if the investigation is not completed) or definitive anti-dumping duty (if the final results of the investigation indicate the existence of the grounds for its imposition).

In case of violation of accepted price undertakings the exporter is granted an opportunity to make comments pertinent to such a violation.

99. The decision on approval of price undertakings made by the Commission shall contain the amount of the provisional or definitive anti-dumping duty, which may be imposed pursuant to paragraph 98 of this Protocol.

8. Imposition and Application of Anti-dumping Duty

100. The anti-dumping duty is applied to the dumped product that is supplied by all exporters, and causes injury to the domestic industry of the Member States, except for the product supplied by those exporters, for whom the price undertakings were approved by the Commission in accordance with paragraphs 90-99 of this Protocol.

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

The Commission may adopt a decision on imposition of anti-dumping duty less than the margin of dumping if such lesser duty would be adequate to remove injury to the domestic industry of the Member States.

102. The Commission establishes the individual anti-dumping duties in respect of the product supplied by each exporter or producer of the dumped product, for whom the individual margin of dumping has been determined.

103. Besides the individual margin of dumping, specified in paragraph 102 of this Protocol, the Commission determines the amount of an anti-dumping duty for the product supplied by all other exporters or producers of

the product originating in the exporting third country, for whom the individual margin of dumping has not been determined, on the basis of the highest margin of dumping that was established during the course of the investigation.

104. A definitive anti-dumping duty may be imposed on products which were entered under customs procedures, provided that they involve the payment of anti-dumping duties, not more than 90 days prior to the date of imposition of a provisional anti-dumping duty, if as a result of the investigation the investigating authority simultaneously determines the following:

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

2) the injury to the domestic industry of the Member States is caused by massive dumped imports in a relatively short time which in light of the timing and the volume and other circumstances (including a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of an anti-dumping duty to be imposed, provided that the importers of this product have been given an opportunity to comment.

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

The decision to publish such a notice is adopted by the investigating authority upon request of the domestic industry of the Member States that contains sufficient evidence of fulfilment of the conditions, specified in paragraph 104 of this Protocol, or on its own initiative in case where such sufficient evidence is available to the investigating authority.

Anti-dumping duty shall not be applied in relation to products which were entered under customs procedures, provided that they involve the payment of anti-dumping duties, before the official publication of a notice specified in the this paragraph.

106. The national legislation of the Member States may establish additional ways to provide information to interested parties on possible application of an anti-dumping duty in accordance with paragraph 104 of this Protocol.

9. Duration and Review of an Anti-dumping Measure

107. An anti-dumping measure shall be applied pursuant to a decision of the Commission as long and to the extent necessary to counteract dumping which is causing injury to the domestic industry of the Member States.

108. The period of application of the anti-dumping measure shall not exceed 5 years from the date of the application of the measure or from the date of completion of the review that was conducted on the basis of changed circumstances and concerned both the analysis of dumped imports and the injury that was caused by the dumped imports to the domestic industry of the Member States, or the date of completion of the expiry review.

109. An expiry review shall be initiated upon a written request, filed in accordance with paragraphs 186-198 of this Protocol, or upon the investigating authority’s own initiative.

An expiry review shall be initiated in case where the application includes evidence of likelihood of continuation or recurrence of dumping and injury to the domestic industry of the Member States if the duty were removed.

The request on expiry review shall be filed not later than 6 months prior the expiry of the anti-dumping measure.

The expiry review shall be initiated prior to the expiry of the anti-dumping measure and completed within 12 months from the date of initiation of such a review.

Before the completion of the review conducted in accordance with the present paragraph the anti-dumping measure continues to apply upon the decision of the Commission. During the extended period of application of a respective anti-dumping measure the anti-dumping duties are levied, in accordance with the procedure for collection of provisional anti-dumping duties, at the rate established in relation to the anti-dumping measure, the period for which is extended due to review.

In case where as a result of an expiry review the investigating authority establishes that there are no grounds for imposition of the anti-dumping measure, or the decision on non-imposition was adopted pursuant to paragraph 272 of this Protocol, the amounts of anti-dumping duty, levied, in accordance with the procedure for collection of provisional anti-dumping duties, at the rate established in relation to the anti-dumping measure, the period for which is extended due to review, are subject to refund to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall timely inform the customs authorities of the Member States on the absence of grounds for imposition of the anti-dumping measure, or on the decision on non-imposition adopted by the

Commission.

The period of application of an anti-dumping measure may be extended by the Commission in case where as a result of an expiry review the investigating authority establishes the likelihood of continuation or recurrence of dumping that causes injury to the domestic industry of the Member States. From the date of entry into force of the decision of the Commission to extend the period of application of an anti-dumping duty the amounts of anti-dumping duties levied in accordance with the procedure for collection of provisional anti-dumping duties, during the period of extension of an anti-dumping measure, shall be transferred and distributed in accordance with the procedure specified in Annex to this Protocol.

110. For the purposes of determination whether the continued imposition of the anti-dumping measure is necessary and (or) review, including the review of individual rate of anti-dumping duty due to changed circumstances, a changed circumstances review may be initiated upon an application of an interested party or on the investigating authority's own initiative, provided that not less than 1 year period has elapsed since the imposition of a definitive anti-dumping duty.

Depending on the purpose of filing an application on review, such an application shall include evidence that due to changed circumstances:

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

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

the existing anti-dumping measure is not sufficient to counteract dumped imports and eliminate injury to the domestic industry of the Member States caused by the dumped imports.

A changed circumstances review, carried out in accordance with the present paragraph, shall be completed within 12 months from the date of its initiation.

111. Review may also be initiated for the purposes of determining individual margins of dumping for any exporter or producer who has not exported the product subject to investigation during the period of investigation. Such a review may be initiated by the investigating authority in case where the exporter or producer files application request that includes evidence that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping measure, and provided that this exporter or producer exports to the customs territory of the Union the product subject to investigation, or is bound by contractual commitments to export substantial volumes of such a product to the customs territory of the Union, termination or withdrawal of which leads to significant losses or to significant fine sanctions for this exporter or producer.

During the course of a review for the purposes of determining individual margins of dumping for exporter or producer in relation to exports of the product subject to investigation to the customs territory of the Union this exporter or producer shall not pay the anti-dumping duty prior to the adoption of a decision upon results of the review. It is understood that the security for the anti-dumping duty shall be provided for imports of such a product into the customs territory of the Union during the course of the investigation in accordance with the procedures specified for the payment of import customs duties in the Customs Code of the Eurasian Economic Union and subject to the provisions of the present paragraph.

The investigating authority shall timely inform the customs authorities of the Member States on the date of initiation of a review.

The security is provided in monetary funds in the amount of the anti-dumping duty calculated on the basis of the amount of an anti-dumping duty for the product supplied by all other exporters or producers, established in accordance with paragraph 103 of this Protocol.

In case where, as a result of the review, a decision on application of an anti-dumping measure is adopted, anti-dumping duty is subject to payment for the period of carrying out of such a review. The amount of security from the date of entry into force of a decision to apply an anti-dumping measure, adopted upon the result of a review, shall be on account of anti-dumping duty in the amount determined on the basis of established amount of anti-dumping duty, and shall be transferred and distributed in accordance with the procedures specified in Annex to this Protocol and subject to the provisions of the present paragraph.

In case where as a result of a review it is reasonably determined to impose an anti-dumping duty that is higher than the amount estimated for the purposes of the security, the difference shall not be collected.

The amount of security that is higher than the amount of the anti-dumping duty payable shall be refunded to the payer in accordance with the procedures specified in the Customs Code of the Eurasian Economic Union.

The review under the present paragraph shall be carried out expeditiously and shall be concluded within a period not exceeding 12 months.

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

113. The provisions of paragraphs 107-112 of this Protocol shall apply to price undertakings accepted by the exporter in accordance with paragraphs 90-99 of this Protocol *mutatis mutandis.*

10. Circumvention of an Anti-dumping Measure

114. For the purposes of this section circumvention is understood as a change in the patterns of trade to avoid the payment of an anti-dumping duty or the fulfilment of the price undertakings accepted by the exporter.

115. Anti-circumvention review may be initiated upon request of an interested party or on the investigating authority’s own initiative.

116. The application, specified in paragraph 115 of this Protocol, shall include the following evidence:

1) circumvention of an anti-dumping measure;

2) the remedial effect of an anti-dumping measure is being undermined due to circumvention and its impact on the volume of production and (or) sales and (or) prices for the like product in the domestic market of the Member States;

3) the existence of dumped imports of the product (its parts and (or) modifications). It is understood that the normal value of the product, its parts and modifications shall be their normal value determined in the course of the investigation upon the results of which the Commission imposed an anti-dumping measure with due regard to the appropriate adjustments for the purposes of comparison.

117. The anti-circumvention review shall be completed within 9 months from the date of its initiation.

118. For the period of anti-circumvention review carried out in accordance with paragraphs 115-120 of this Protocol the Commission may impose an anti-dumping duty on imported parts and (or) modifications of the dumped product subject to investigation into the customs territory of the Union from the exporting third country, that is levied in accordance with the procedure established for the collection of provisional anti-dumping duties, and on the dumped product subject to investigation, and (or) its parts and (or) modifications imported into the customs territory of the Union from any other exporting third country.

119. In case where as a result of an anti-circumvention review carried out in accordance with paragraphs 115-120 of this Protocol the investigating authority does not establish circumvention of an anti-dumping duty, the amounts of the anti-dumping duty, paid in accordance with paragraph 118 of this Protocol and the procedure established for the collection of provisional anti-dumping duties, shall be refunded to the payer pursuant to procedures specified in Annex to this Protocol.

The investigating authority shall timely inform the customs authorities of the Member States that the circumvention is not established.

120. In case where the circumvention has been established upon results of the anti-circumvention review carried out in accordance with paragraphs 115-120 of this Protocol, the Commission may extend the anti-dumping duty on parts and (or) modifications of the product imported into the customs territory of the Union from an exporting third country to the other exporting third country. From the date of entry into force of the

decision of the Commission to impose the anti-dumping measure under this paragraph the amount of anti-dumping duties paid in accordance with the procedure established for the collection of provisional anti-dumping duties shall be transferred and distributed pursuant to procedures specified in Annex to this Protocol.

V. Countervailing Measures

121. For the purposes of this Protocol subsidy means:

1) a financial contribution by the granting authority that gives additional benefits to the recipient of subsidies, rendered within the territory of the exporting third country in the form of:

direct transfer of funds (including grants, loans, purchases of shares) or obligations to transfer such funds (including loan guarantees);

withdrawal of funds or complete or partial renunciation of funds that were supposed to become the government revenue of the exporting third country (including the provision of tax credits), excluding the exemption of the exported goods from taxes and duties levied on the like products destined for domestic consumption or reduction or refund of such taxes or duties in the amount not exceeding the amount actually paid;

preferential or free provision of goods or services, excluding goods and services intended for the maintenance and development of general infrastructure, i.e. the infrastructure that is not related to a specific producer and (or) exporter;

preferential procurement of goods.

2) any kind of income or price support, giving the recipient additional advantages, that results directly or indirectly in increase of export of goods

from the exporting third country or decrease of import of the like product to the third country.

1. The Principles of Classifying Subsidies of Exporting Third Country to Specific Subsidies

122. A subsidy of an exporting third country is specific if the access to the subsidy is limited only to separate enterprises by the granting authority or by the legislation of the exporting third country.

123. For the purposes of this Section, separate enterprises means a producer and (or) an exporter, or a particular sector of the economy of an exporting third country, or a group (alliance, association) of producers and (or) exporters, or sectors of the economy of an exporting third country.

124. A subsidy is specific if the number of separate enterprises that are allowed to use this subsidy is limited to enterprises located within a designated geographical region within the jurisdiction of the granting authority.

125. A subsidy is not specific, if the legislation of the exporting third country or granting authority establishes the general objective criteria or conditions governing the eligibility for, and the amount of, a subsidy (depending on number of workers engaged in the production process or the volume of output) and strictly adhered to.

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

1) use of a subsidy program by a limited number of separate enterprises;

2) predominant use of the subsidy by certain enterprises;

3) the granting of disproportionately large amount of subsidy to certain enterprises;

4) the preferential manner in which discretion is exercised by the granting authority in the decision to grant the subsidy.

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

1) a subsidy contingent, in law of the exporting third country or in fact, whether solely or as one of several other conditions, upon export performance. A subsidy deemed to be contingent in fact upon export performance, if granting the subsidy in accordance with the legislation of the exporting third country is not connected with the export performance, in fact connected with the past or possible future export of goods or export revenue. The fact of granting the subsidy to the exporting enterprises by itself doesn't mean the subsidy contingent upon export performance within the meaning of this paragraph;

2) a subsidy contingent, in law of the exporting third country or in fact, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

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

2. The Principles of Calculation of the Amount of a Specific Subsidy

129. The amount of specific subsidy is based on the benefit to the recipient of such subsidy.

130. The amount of benefit gained by the recipient of a specific subsidy is calculated based on the following guidelines:

1) provision of equity capital by the granting authority shall not be considered as conferring a benefit, unless the investment decision can be

regarded as inconsistent with the usual investment practice (including for the provision of risk capital) in the territory of the exporting third country;

2) a loan by the granting authority shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market of the exporting third country. In this case the benefit shall be the difference between these two amounts;

3) a loan guarantee by the granting authority shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;

4) the provision of goods or services or purchase of goods by the granting authority shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration or purchase of goods is not made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for these goods or services in question in the exporting third country, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

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

131. For the purposes of this Section the term “injury to the domestic industry of the Member States” shall be taken to mean material injury to a domestic industry of the Member States, threat of material injury to a domestic industry or material retardation of the establishment of such an industry in the Member States.

132. Injury to the domestic industry of the Member States by the subsidized imports is determined based on the volume of subsidized imports and the effect of such imports on price of the like product at the domestic market of the Member States and on the producers of the like product in the Member States.

133. The investigating period to be analyzed for the purposes of determination of injury to the domestic industry of the Member States is determined by the investigating authority.

134. The investigating authority when analyzing the volume of subsidized imports shall determine whether there has been significant increase in subsidized imports of product under investigation (either in absolute terms or relative to production or consumption of the like product in the Member States).

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

1) the amount of subsidization established in relation to the imports from each exporting third country for that product is more than 1 percent of its

value, and the volume of imports from each exporting third country is not negligible in accordance with paragraph 228 of this Protocol;

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

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

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

2) whether the effects of the subsidized imports is otherwise to depress prices of the like product on the domestic market of the Member States to a significant degree;

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

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

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

2) factors, affecting domestic prices;

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

138. The effect of the subsidized imports shall be assessed in relation to the domestic production of the Member States of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, sales of the like product by their producers and profits.

If such separate identification of that production is not possible, the effects of the subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

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

1) nature, the amount of subsidy or subsidies in question and the trade effects likely to arise therefrom;

2) rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;

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

4) prices for the product subject of subsidized imports, whether such prices will have depressing or suppressing effect on the prices of the like product at the domestic market of the Member States, and would likely increase demand for further subsidized imports;

5) inventories of the exporter of the product subject of subsidized imports.

140. A determination of a threat of material injury to the domestic industry of the Member States shall be made, if the investigating authorities after considering all the factors set forth in paragraph 139 of this Protocol, came to the conclusion that further subsidized imports are imminent and that, unless countervailing measure is taken, material injury to the domestic industry of the Member States would occur.

141. A determination of a causal relationship between the subsidized imports and the injury to the domestic industry of the Member States shall be based on an examination of all relevant factors and evidence before the investigating authorities.

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

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

4. Imposition of Provisional Countervailing Duties

143. If the information received by the investigating authority prior to the termination of the investigation, sustains the existence of subsidized imports and material injury to the domestic industry of the Member States caused by such imports, the Commission on the basis of the report of the investigating authority, specified in paragraph 7 of this Protocol, shall take a decision on the application of a countervailing measure in the form of provisional

countervailing duty, that shall remain in force for up to 4 months to counteract the injury to the domestic industry of the Member States caused by the subsidized imports.

144. Provisional countervailing duty shall not be applied sooner than 60 calendar days from the date of initiation of the investigation.

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

146. Where as a result of the investigation, the investigating authority makes the determination that there is no reasons for the imposition of a countervailing measure, or non-application of the countervailing measure in accordance with paragraph 272 of this Protocol, the amount of the paid provisional countervailing duty shall be refunded to the payer in accordance with the Annex to this Protocol.

The investigating authority shall notify the customs authorities of the Member States on the absence of grounds for application of countervailing measure or on Commission’s decision on non-application of the countervailing measure.

147. Where an application of a countervailing measure is made based on the determination of threat of injury or material retardation of the industry of the Member States, the amount of the paid provisional countervailing duty shall be refunded to the payer in accordance with the Annex to this Protocol.

148. Where an application of a countervailing measure is based on the determination of injury to the industry of the Member States or threat thereof (where the effect of the subsidized imports would, in the absence of the provisional countervailing duty, have led to a determination of injury to the

industry of the Member States), any amount of provisional countervailing duty paid since the date of entry into force of the decision on application of countervailing measure shall be deposited and distributed in accordance with the Annex to this Protocol in compliance with paragraphs 149 and 150 of this Protocol.

149. In case where as a result of the investigation it is considered reasonable to impose the countervailing duty at a rate less than the provisional countervailing duty, the amount of the provisional countervailing duty equal to the amount of a definitive countervailing duty shall be transferred and distributed in accordance with the procedure specified in the Annex to this Protocol.

The amount of provisional countervailing duty that exceeds the amount of definitive countervailing duty shall be refunded to the payer in accordance with the Annex to this Protocol.

150. Where as a result of the investigation, the definitive countervailing duty is higher than the provisional countervailing duty, the difference shall not be collected.

151. Provisional countervailing duty shall be applied with simultaneous continuation of proceeding.

152. Provisional countervailing duty shall be applied in accordance with paragraphs 164-168 of this Protocol.

153. The decision on application of provisional countervailing measures shall be taken not later than 7 months from the date of initiation of the investigation.

5. Voluntary Undertakings by the Subsidizing Third Country or Exporter of Subsidized Imports Subject to Investigation

154. The investigation may be suspended or terminated without the imposition of countervailing duty upon the adoption by the Commission of the decision on the approval of one of the following voluntary undertakings received by the investigating authority in writing:

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

the exporter of the product under investigation agrees to revise its prices for this product (and to provide the support by the related parties if any of such revision) so that the investigating authority is satisfied that the injurious effect of the subsidy to the industry of the Member States is eliminated.

Price increases under such undertakings shall not be higher than the amount of a specific subsidy in the exporting third country, calculated in terms of subsidization per unit of the subsidized and exported product.

Price increases of the subsidized imports can be less than the amount of a specific subsidy of the exporting third country, calculated in terms of subsidization per unit of the subsidized and exported product, if such increases would be adequate to remove the injury to the domestic industry of the Member States.

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

The decision to accept voluntary undertakings by the exporter of the product under investigation shall not be adopted by the Commission, unless it has obtained the consent of the authority of the exporting third country for the acceptance of undertakings, specified in the third indent of the paragraph 154 of this Protocol.

156. The decision to accept voluntary undertakings shall not be adopted by the Commission, if the investigating authority considers their acceptance impractical due to the great number of actual or potential exporters of the product under investigation, or for other reasons.

Where practicable, the investigating authority shall provide to the exporters the reasons which have led it to consider acceptance of an undertakings as inappropriate, and shall give the exporters an opportunity to make comments thereon.

157. The investigating authority shall send a request to every exporter, accepted voluntary undertakings, and the authority of these exporting third countries, to present non-confidential version of such undertakings in order to be able to provide it to the interested parties.

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

159. If the decision to accept voluntary undertakings is adopted by the Commission, the countervailing investigation shall nevertheless be completed upon request of the exporting third country or if the investigating authority so decides.

In cases where as a result of the investigation, the investigating authority made a negative determination of subsidization or injury to the domestic industry of the Member States, the undertakings of the exporting third country or exporters shall automatically lapse, except in cases where such a determination is due in large part to the existence of undertakings. In cases where such a determination is due in large part to the existence of voluntary undertakings, the Commission may require that undertakings be maintained for a reasonable period of time.

160. In cases where as a result of the investigation, the investigating authority made an affirmative determination of subsidization and injury to the industry of the Member States, undertakings shall continue consistent with its terms and the provisions of this Protocol.

161. The investigating authority may require any exporting third country or exporter from whom voluntary undertakings has been approved by the Commission to provide information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data.

Non provision of requested information within the period prescribed by the investigating authority and disagreement for verification of pertinent data shall consider as violation of voluntary undertakings by exporting third country or exporter.

162. In case of violation of voluntary undertakings by exporting third country or exporter, or withdrawal of such undertakings, the Commission may adopt a decision on the application of countervailing measure in the form of provisional countervailing duty (if the investigation is incomplete) or definitive countervailing duty (if the final determination indicates the grounds for its imposition).

Exporting third country or exporter in case of violation of voluntary undertakings shall be given the opportunity to make comments on such violation.

163. The decision of the Commission approving voluntary undertakings shall determine the rate of provisional countervailing duty or definitive

countervailing duty which can be introduced in accordance with paragraph 162 of this Protocol.

6. Imposition and Collection of Countervailing Duty

164. The decision on imposition of countervailing duty shall not be applied by the Commission if the specific subsidy of the exporting third country is withdrawn.

165. The decision on imposition of countervailing duty shall be applied after the exporting third country granting specific subsidy has rejected the proposal to hold consultations or if during the consultations no mutually agreed solution has been reached.

166. A countervailing duty is imposed on imports of product from all exporters found to be subsidized and causing injury to the industry of the Member States (except as to imports from those exporters from which voluntary undertakings have been approved by the Commission).

In respect to the products from some exporters the Commission may establish the individual countervailing duty rate.

167. The amount of countervailing duty shall not be in excess of the amount of the subsidy found to exist in the exporting third country, calculated in terms of subsidization per unit of the subsidized and exported product.

If subsidies are granted in accordance with different subsidization programs, their cumulative effect shall be taken into consideration.

The amount of countervailing duty to be imposed can be less than the amount of specific subsidy of the exporting third country if such lesser duty would be adequate to remove the injury to the domestic industry of the Member States.

168. When determining the amount of countervailing duty the investigating authority shall take into consideration the opinions of consumers of the Member States, whose economic interests can be affected by imposition of such countervailing duty.

169. A countervailing duty may be imposed on products placed under customs procedures where this is one of the conditions of such placement, no less than 90 calendar days prior to the date of introduction of the provisional countervailing duty, if the investigating authority finds the following:

1) injury which would be difficult to repair is caused by massive imports in a relatively short period of time of a product benefiting from the specific subsidies paid or granted;

2) it is necessary, in order to prevent the recurrence of such injury, to impose countervailing duty to the imported products specified in sub-paragraph 1 of this paragraph.

170. The investigating authority after the initiation of an investigation shall publish a notice in the official sources specified in the Treaty, containing the notice on the possible imposition of countervailing duty with respect to the product in question in accordance with paragraph 169 of this Protocol.

The decision to publish such a notice shall be adopted by the investigating authority on the request of the domestic industry of the Member States, if there is sufficient evidence of the fulfillment of the conditions, specified in paragraph 169 of this Protocol, or on its own initiative based on the evidences that it has.

No countervailing duty shall be applied in respect of the products placed under customs procedures where this is one of the conditions of such placement, before the official publication of a notice specified in this paragraph.

171. The legislation of the Member States may establish additional ways to provide information to interested parties on possible application of countervailing duty in accordance with paragraph 169 of this Protocol.

7. Duration and Review of Countervailing Measure

172. A countervailing measure shall be applied pursuant to the decision of the Commission as long as and to the extent necessary to counteract subsidized imports which is causing injury to the domestic industry of the Member States.

173. The period of application of the definitive countervailing measure shall not exceed 5 years from the date of the application of the measure or from the date of completion of the review, initiated in connection with the changed circumstances and covered both subsidization and injury to the domestic industry of the Member States, or the date of completion of the expiry review.

174. An expiry review shall be carried out upon a request (in written form), filed in accordance with paragraphs 186-198 of this Protocol, or on the investigating authority’s own initiative.

An expiry review shall be initiated in case where the request includes evidence of likelihood of continuation or recurrence of subsidization and injury to the industry of the Member States if the countervailing duty were removed.

The request on expiry review shall be filed not later than 6 months prior to the expiry of the countervailing measure.

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

Pending the completion of the expiry review carried out in accordance with this paragraph, the countervailing measure may remain in force pursuant to the decision of the Commission. During the extended period of application of the relevant countervailing measure, the countervailing duty shall be levied, in accordance with the procedure for collection of provisional countervailing duties, at the rate established in relation to the countervailing measure, the period for which is extended due to the review.

In cases where as a result of an expiry review the investigating authority establishes that there are no grounds for imposition of the countervailing measure, or the decision on non-imposition was adopted pursuant to paragraph 272 of this Protocol, the amounts of countervailing duty levied, in accordance with the procedure for collection of provisional countervailing duties, during the period for which the application of the countervailing measure has been extended due to review, are subject to refund to the payer in accordance with the procedure specified in the Annex to this Protocol.

The investigating authority shall timely inform the customs authorities of the Member States on the absence of grounds for imposition of the countervailing measure, or on the decision on non-imposition adopted by the Commission.

The period of application of a countervailing measure may be extended by the Commission in case where as a result of an expiry review the investigating authority establishes the likelihood of continuation or recurrence of the subsidization and injury to the domestic industry of the Member States. From the date of entry into force of the decision of the Commission to extend the period of application of a countervailing measure the amounts of countervailing measure levied in accordance with the procedure for collection of provisional countervailing duties, during the period of extension of a countervailing measure, shall be transferred and distributed in accordance with the procedure specified in Annex to this Protocol.

175. Upon request by any interested party or on the investigating authority's own initiative, provided that not less than 1 year has elapsed since the imposition of a countervailing measure, a changed circumstances review may be initiated for the purposes of determination whether the continued imposition of the countervailing measure is necessary and (or) review, including the review of individual rate of countervailing duty due to the changed circumstances.

Depending on the purposes of the request for a review due to the changed circumstances, such a request shall include evidence, that:

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

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

the existing countervailing measure is not sufficient to counteract subsidized imports and eliminate injury caused by subsidized imports.

A changed circumstances review shall be completed within 12 months from the date of its initiation.

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

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

178. The review may also be initiated for the purposes of determining individual countervailing duty rate for the exporter, subject to countervailing duty in respect of which the investigation had not been conducted because of the reasons other than noncooperation. Such a review may be initiated by the investigating authority upon the request of this exporter.

8. Circumvention of the Countervailing Measure

179. For the purposes of this section circumvention is understood as a change in the patterns of trade to avoid the payment of a countervailing duty or the fulfillment of the voluntary undertakings.

180. Anti-circumvention review may be initiated upon the request of an interested party or on the own initiative of the investigating authority.

181. The request, specified in paragraph 180 of this Protocol, shall include the following evidence:

1) circumvention of a measure;

2) the remedial effect of a countervailing measure is being undermined due to circumvention and its impact on the volume of production and (or) sales and (or) prices for the like product in the domestic market of the Member States;

3) the existence of the benefit from subsidies granted to the producer and (or) the exporter of product (its parts and (or) modifications).

182. For the period of the review carried out in accordance with paragraphs 179-185 of this Protocol the Commission may impose a countervailing duty on imported parts and (or) modifications of the subsidized products into the customs territory of the Union from the exporting third country, that is levied in accordance with the procedure established for the collection of provisional countervailing duties, and on the subsidized product and (or) its parts and (or) modifications imported on the customs territory of the Union from any other exporting third country.

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

The investigating authority shall timely inform the customs authorities of the Member States that the circumvention of the countervailing measure has not established.

184. In case where the circumvention has been established upon the results of the review carried out in accordance with paragraphs 179-185 of

this Protocol, the countervailing measure may be extended on imported parts and (or) modifications of the subsidized products, imported into the customs territory of the Union from the exporting third country, and on the subsidized product and (or) its parts and (or) modifications imported on the customs territory of the Union from any other exporting third country. From the date of entry into force of the decision of the Commission on imposition of a countervailing measure under this paragraph the amounts of countervailing duties paid in accordance with the procedure established for the provisional countervailing duties shall be transferred and distributed pursuant to procedures specified in Annex to this Protocol.

185. The anti-circumvention review shall be completed within 9 months from the date of its initiation.

VI. Conducting Investigations

1. Basis for Investigation

186. For the purpose of determination of the existence of increased imports and the resulting serious injury to the domestic industry of the Member States or a threat of such injury, as well as determination of the dumped or subsidized imports and the resulting material injury, a threat of such injury or a material retardation of the establishment of the domestic industry of the Member States, investigation is carried out by the investigating authority based upon a written application or on its own initiative.

187. The application specified in paragraph 186 of this Protocol is submitted by:

1) producer of the like or directly competitive product (for the purposes of safeguard investigation) or the like products (for the purposes of anti-dumping or countervailing investigation) in the Member States or by their authorised representative;

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

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

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

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

2) documents confirming that the producers in the Member States (including the applicant) supporting the application account for at least 25 percent of the total production volume of the like products in the Member States on a condition that the collective output of the producers in the Member States (including the applicant) supporting the application constitutes more than 50 percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application (in cases where and antidumping or countervailing measure application is submitted).

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

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

2) a description of the product imported into the customs territory of the Union subject to the proposal of imposition of safeguard, anti-dumping or countervailing measure anti-dumping with the indication of the code in CN of EAEU;

3) the names of the exporting third countries of origin or departure of the product specified in sub-paragraph 2 of this paragraph on the basis of customs statistics;

4) information on known producers and (or) exporters of the product specified in the sub-paragraph 2 of this paragraph in the exporting third country and on known importers and known major consumers of such product in the Member States;

5) information on the changes in the volume of import into the customs territory of the Union of the product subject to the proposal of imposition of safeguard, anti-dumping or countervailing measure for the previous period, as well as for the subsequent period for which representative statistics is available as of date of the application;

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

191. In addition to the information specified in paragraph 190 of this Protocol depending on the type of measure proposed in the application, the applicant shall include the following information:

1) evidence of the increased imports of the product, of serious injury to the domestic industry of the Member States or a threat of such injury due to the increased imports of product, the proposal on imposition of a safeguard measure with the indication of the extent and the period of application of such measure, as well as the adaptation plan of the domestic industry of the Member States to operate in conditions of foreign competition for the period of application of the safeguard measure proposed by the applicant (in cases where safeguard measure application is submitted);

2) information on the export price and normal value of the product, evidence of material injury, threat of such injury or a material retardation of the establishment of the domestic industry of the Member States due to dumped imports of the product, as well as a proposal on the imposition of an anti-dumping measure with the indication of its size and the period of application (in cases where anti-dumping application is submitted);

3) information on the existence and nature of the specific subsidy of the exporting third country and, if possible, its size, the evidence of material injury or a threat of such an injury or a material retardation of the establishment of the domestic industry of the Member States due to the subsidized imports of the product, as well as the proposal on the imposition of a countervailing measure with the indication of its extent and the period of application (in cases where countervailing application is submitted).

192. The evidence of the existence of serious injury or a threat of such injury or material retardation of the domestic industry of the Member States (in cases where safeguard measure application is submitted) and evidence of material injury or a threat of such injury or material retardation of the domestic industry of the Member States due to the dumped or subsidized

imports (in cases where anti-dumping or countervailing measure application is submitted) shall be based upon objective factors characterizing the economic situation of the domestic industry of the Member States, and shall be expressed in volume and value indicators for the preceding period, as well as for the subsequent period for which representative statistical data is available at the date of application (including the production volume and the sales volume, the share of the product in the market of the Member States, the cost of production, the price of the product, capacity utilization, employment, labor productivity, profit margins, profitability, amount of investments in the domestic industry of the Member States).

193. All information provided in the application shall be provided with references to respective sources.

194. For the purpose of comparability, common monetary and quantitative units shall be used for the indicators contained in the application.

195. The information contained in the application shall be certified by managers of the producers, who presented such information, as well as by their employees responsible for the accounting and financial reporting in the part concerning the information that is directly relevant to producer's data.

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

197. The date of submission of the application shall be considered the date of its registration in the investigating authority.

198. The application for the imposition of safeguard, anti-dumping or countervailing measure may be rejected on to the following grounds:

failure to submit information specified in paragraphs 189-191 of this Protocol;

unreliability of the information submitted by the applicant specified in paragraphs 189-191 of this Protocol;

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

The rejection of the application on other grounds is not permitted.

2. Initiation and Subsequent Investigation

199. Prior to the decision on the initiation of an investigation, the investigating authority shall notify the exporting third country in writing of the receipt of an application for the imposition of an anti-dumping or countervailing measure prepared in accordance with paragraphs 187-196 of this Protocol.

200. Prior to the decision on the initiation of an investigation, the investigating authority within 30 calendar days from the date of registration of the application examines the sufficiency and adequacy of the evidence and the information contained in the application in accordance with paragraphs 189-191 of this Protocol. Such period may be extended should the investigating authority require any additional information, but shall not exceed 60 calendar days.

201. The application may be withdrawn by the applicant before the initiation of the investigation or in the course of the investigation.

The application is not considered as submitted if it is withdrawn before the initiation of the investigation.

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

202. The information contained in the application shall not be subject to public disclosure prior to initiation of an investigation,

203. The investigating authority shall decide to initiate or refuse to conduct an investigation before the expiry of the period specified in paragraph 200 of this Protocol.

204. Upon deciding on the initiation of an investigation, the investigating authority shall notify in writing the competent authority of the exporting third country, as well as other known interested parties, and within not more than 10 business days from the date of this decision shall give the public notice on the initiation of the investigation in the official sources provided by Treaty.

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

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

If the available evidence is insufficient, such an investigation shall not be initiated.

207. A decision on rejection to initiate the investigation shall be taken if the investigating authority based on the results of examination of the application determined that the information submitted in accordance with paragraphs 190-191 of this Protocol does not indicate the existence of the increased, dumped or subsidized imports of products to the customs territory of the Union, and (or) a material injury or a threat of material injury to the domestic industry of the Member States caused by dumped or subsidized imports or serious injury, threat of serious injury to the domestic industry of the Member States caused by the increased imports to the customs territory of the Union.

208. Upon deciding on the rejection of the investigation the investigating authority shall notify in writing the applicant thereof about the reasons for the rejection within no more than 10 calendar days from the date of this decision.

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

The applicant and producers in the Member States supporting the application shall be recognized as participants in the investigation from the date of the initiation of the investigation.

210. Interested parties may, within the period that does not impede the course of the investigation, submit any information required for the investigation purposes, including confidential information indicating the source of such information.

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

The requests may also be sent to other organizations in the Member States.

The requests shall be sent by the head (deputy head) of the investigating authority.

The request is considered as received by an interested party upon its transfer to the authorised representative of the interested party or after 7 calendar days from the date when the request was sent by post.

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

A response is considered as received by the investigating authority if it has arrived to the investigating authority not later than 7 calendar days from the date specified in the fifth indent of this paragraph.

The information provided by the interested party after the expiration of the specified date may be disregarded by the investigating authority.

Upon the motivated written request of the interested party the period for the response may be extended by the investigating authority.

212. If an interested party refuses to provide necessary information requested by the investigating authority, fails to provide such information within the established period of time or provides inadequate information, thereby significantly impeding the investigation, such interested party shall be considered an uncooperative, and preliminary or final determinations may be made on the basis of the facts available.

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

If the investigating authority does not take into account the information provided by the interested party for reasons other than those specified in the first indent of this paragraph, the interested party shall be informed of the reasons and grounds for the decision and shall be given an opportunity to submit its comments in this regard within the period established by the investigating authority.

If during the preparation of preliminary or final determination of the investigating authority, including the determination of normal value of the products (in case of an anti-dumping investigation), provisions of the first subparagraph of this paragraph were applied and the information was used (including the information provided by the applicant), the information used in the preparation of such determinations shall be verified using the available information obtained from other sources or from the interested parties, provided that the verification does not impede the investigation and violate the deadlines.

213. As soon as possible after the date of a decision to initiate an anti-dumping or a countervailing investigation, the investigating authority shall send to the competent authority of the exporting third country and known exporters copies of the application or its non-confidential version (if the

application contains confidential information), as well as provides its copies to other interested parties upon request.

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

The investigating authority provides copies of the application or its non-confidential version to the participants in safeguard investigation upon their request, if the application contains confidential information.

During the investigation the investigating authority, taking into account the need to preserve confidentiality, provides to the participants in the investigation at their request the opportunity to see the information submitted in written form by any interested parties as the evidence relevant to the investigation.

During the investigation the investigating authority provides to participants of the investigation the opportunity to see other information relevant to the investigation and which is used by them in the course of the investigation, except for confidential information.

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

215. During the investigation all interested parties shall be given the opportunity to defend their interests. To this end the investigating authority provides all interested parties at their request the opportunity to have a meeting to present their opposing view and to offer rebuttal. Provision of such an opportunity must take into account the need to preserve the confidentiality of information. It is not obligatory for all interested parties to

attend the meeting, and the absence of any party shall not be prejudicial to their interests.

216. Consumers using in their production the products that are object of the investigation, representatives of public associations of consumers, state government authorities (administrations), local government authorities and other persons may submit to the investigating authority the information that is relevant to the investigation.

217. The duration of the investigation shall not exceed:

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

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

218. The course of the investigation shall not impede implementation of any customs operations in respect of the product under investigation.

219. The date of termination of the investigation shall be the date of the approval of the report on the results of the investigation by the Commission and of the draft act of the Commission specified in the paragraph 5 of this Protocol.

If the investigating authority made final conclusion about the absence of grounds for application, review or cancellation of a safeguard, anti-dumping or countervailing measures, the date of the termination of the investigation shall be the date of publication of the relevant notice by the investigating authority.

In case of introduction of provisional safeguard duty, provisional anti-dumping duty or provisional countervailing duty the investigation shall be completed before the expiration date of the relevant provisional duties.

220. If the investigating authority in the course of investigation establishes the absence of grounds specified in the second and third indent of paragraph 3 of this Protocol, the investigation shall be terminated without the introduction of any safeguard, anti-dumping or countervailing measures.

221. If within 2 calendar years immediately preceding the date of initiation of the investigation, one manufacturer supporting the application referred in paragraph 186 of this Protocol (considering it as a part of a group of persons within the meaning of section XIII of the Treaty) accounts for such a share of the production in the customs territory of the Union of the like or directly competitive product (in the course of safeguard investigation) or the like product (in the course of anti-dumping or countervailing investigation), that in accordance with the methodology of competition assessment approved by the Commission, the position of this manufacturer (considering it as a part of a group of persons) in the relevant product market of the Union may be recognized as dominant, the structural unit of the Commission authorised to control the compliance with the general rules of competition in transboundary markets area, upon the request of the investigating authority, assesses the effects of the safeguard, anti-dumping or countervailing measures on the competition in the relevant product market of the Union.

3. Anti-dumping Investigation

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

The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 percent.

223. The volume of dumped imports from an exporting third country shall be regarded as negligible if it is found to account for less than 3 percent of imports into the customs territory of the Union of the like product subject to investigation, provided that exporting third countries which individually account for less than 3 percent of the imports into the customs territory of the Union of the like product subject to investigation collectively account for less than 7 percent of imports into the customs territory of the Union of the like product subject to investigation.

224. Prior to decision based on the results of the anti-dumping investigation the investigating authority informs interested parties on conclusions made upon the results of the investigation and considered material with due regard to the requirement to protect confidential information and provides an opportunity to make comments.

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

4. Countervailing Duty Investigation

225. After the application is accepted and before a decision to initiate an investigation has been taken the investigating authority shall suggest the government of the exporting third country, from which the subject product is exported, to enter into consultations with the aim of clarifying the situation as to the existence of a subsidy, its amount and consequences of granting an alleged specific subsidy and arriving at a mutually agreed solution.

Such consultations may continue throughout the period of investigation.

226. The provisions on consultations specified in paragraph 225 of this Protocol shall not prevent to adopt a decision on initiation of the investigation and application of a countervailing measure.

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

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

The volume of subsidized imports shall normally be regarded as negligible if it is found to account for less than 1 percent of imports into the customs territory of the Union of the like product subject to investigation, provided that exporting third countries which individually account for less than 1 percent of the imports into the customs territory of the Union of the like product subject to investigation collectively account for less than 3 percent of imports into the customs territory of the Union of the like product subject to investigation.

229. Countervailing duty investigation of a product subject to investigation originating in a developing country or a least developed country which is the beneficiary of the system of tariff preferences of the Union shall be terminated in cases where the investigating authority determines that the overall level of specific subsidies of the exporting third country granted in relation to the product in question does not exceed 2 percent of its value calculated on a per unit basis, or the volume of the subsidized imports of this product originating in such a third country represents less than 4 percent of total imports into the customs territory of the Union, provided that developing and least developed countries which individually account for less than 4 percent of the imports into the customs territory of the Union of the like product subject to investigation collectively account for less than 9 percent of imports into the customs territory of the Union of the like product subject to investigation.

230. Prior to decision on the results of the countervailing duty investigation the investigating authority informs interested parties on conclusions made upon the results of the investigation and considered material with due regard to the requirement to protect confidential information and provides an opportunity to make comments.

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

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

231. With respect to anti-dumping or countervailing duty investigation the term “domestic industry of the Member States” shall be interpreted in the meaning established in Article 49 of the Treaty, except for the cases specified in paragraphs 232 and 233 of this Protocol.

232. In case where the producers of the like product in the Member States are themselves importers of the dumped or subsidized product subject to investigation, or related to the exporters or importers of the dumped or subsidized product subject to investigation, the term “domestic industry of the Member States” may be interpreted as referring to the rest of the producers.

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

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

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

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

particular producers of the like product in the Member States and foreign producers, the exporters or importers of the product subject to investigation together directly or indirectly control a third person, provided that there are grounds for believing that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers

233. In exceptional circumstances for the purposes of defining the domestic industry of the Member States the territory of the Member State may be divided into two or more separate competitive markets and the producers in the Member States within each market may be regarded as a separate domestic industry of the Member States if the producers within such market sell not less than 80 percent of their production of the like product for consumption or processing in that market, and the demand in that market is not to a substantial degree satisfied by producers of the product in question located elsewhere on the territory of the Member States.

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

234. When the domestic industry of the Member States has been interpreted in the meaning defined in paragraph 233 of this Protocol and provided that as a result of the investigation a decision to apply an anti-

dumping or countervailing measure is adopted, such a measure may be applied in relation to all imports of the product into the customs territory of the Union.

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

6. Public Hearing

235. The investigating authority holds public hearing based upon a written request submitted by any participant in the investigation and within the time period established in this Protocol.

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

The date of the public hearing is appointed no sooner than 15 calendar days from the date of respective notice.

237. Participants in the investigation or their representatives and persons involved for the purposes of providing the evidence related to the investigation can take part in the public hearing.

In the course of the public hearing the participants in the investigation may express their opinion and provide evidence related to the investigation.

The representative of the investigating authority can ask the participants questions related to the essence of the submitted facts. The participants in the investigation can also ask each other questions and shall give answers. The participants in the public hearing are not obliged to disclose information treated as confidential.

238. Oral information that has been submitted in the course of the public hearing shall be taken into account during the investigation, if after 15 calendar days from the date of the public hearing the participants have submitted it in writing to the investigating authority.

7. Collection of Information during the Course of the Investigation

239. After the decision to initiate an anti-dumping or a countervailing duty investigation has been adopted, the investigating authority sends to known exporters and (or) producers of the product subject to investigation a questionnaire which must be completed by them.

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

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

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

Upon a reasoned request in writing received from the parties, specified in paragraph 239 of this Protocol, the time period may be extended by the investigating authority for no more than 14 calendar days.

241. The questionnaire is considered to be received by the exporter and (or) the producer of the product from the date of delivery directly to the representative of the exporter and (or) producer or within 7 calendar days from the date of sending it by mail.

The responses to the questionnaire are considered to be received by the investigating authority, if they have been submitted to the investigating authority in confidential and non-confidential versions not later than 7 calendar days from the date of expiry of the period specified in paragraph 240 of this Protocol, i.e. 30 calendar days, or from the date of the expiry of the extension period.

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

In order to verify information provided during the course of an investigation or to obtain further details, related to the investigation conducted, the investigating authority may carry out verification if required:

in the territory of the third country provided it obtains the agreement of respective foreign exporters and (or) producers of the product subject to investigation and there are no objections from the government of the third country that has been officially notified on the forthcoming verification;

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

The verification visit is carried out after the response to the questionnaire, sent in accordance with paragraph 239 of this Protocol, has been received, unless the foreign producer or exporter voluntary agrees on the verification visit before such response have been sent and the government of the third country has no objections.

After the agreement has been obtained from the respective participants in the investigation and before the visit is made the investigating authority shall send a list of documents and records that shall be submitted to the employees directed to carry out verification. The investigating authority notifies the government of the third country of the addresses and names of the foreign exporters or producers to be verified and the dates of such verifications.

In the course of the verification visit other documents and records, which are necessary for verification of the responses to the questionnaire, may be requested.

In case where the investigating authority intends to include non-governmental experts in the investigating team, the participants in the investigation subject to verification visit shall be timely notified on this decision of the investigating authority. The participation of such experts in the verification visit is allowed only provided that there is an opportunity to apply sanctions for breach of requirements to protect confidential information which was obtained during the verification visit.

243. In order to verify the information submitted in the course of the investigation or to obtain further details, related to the investigation conducted, the investigating authority may direct its representatives to the location of the interested parties, collect information, hold consultations and

negotiations with the interested parties, get familiar with the samples of the product and take other necessary actions for conducting investigations.

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

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

245. The authorised authorities of the Member States, diplomatic and trade representations in the third countries shall submit upon request information specified in this Protocol to the investigating authority, that is necessary for the initiation and conduct of the safeguard, anti-dumping and countervailing duty investigations (including reviews), preparation of proposals upon results of the investigations conducted, monitoring of the effectiveness of safeguard, anti-dumping and countervailing measures and control of the compliance with the commitments approved by the Commission.

246. The authorised authorities of the Member States, diplomatic and trade representations of the Member States in the third countries shall:

1) submit available information or notify on inability to provide information with explanation of reasons for refusal within 30 calendar days from receipt of the request of the investigating authority. Upon a reasoned request of the investigating authority the requested

information shall be submitted within a shorter period;

2) guarantee the completeness and accuracy of the submitted information and if necessary timely provide respective additional and modified information.

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

1) statistical information on foreign trade;

2) data from goods declarations itemizing the customs procedures and physical and value indicators on importation (exportation) of the product, trade name of the product, terms of supply, country of origin of the product (country of departure, country of destination), name and other details of the sender and the recipient;

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

4) information on impact assessment of possible imposition or non-imposition of safeguard, anti-dumping or countervailing measure on the market of the Member States of the product subject to investigation upon results of the respective investigation, and the forecast regarding production activities of the national firms in the Member States.

248. The list of information specified in paragraph 247 of this Protocol is not exhaustive. If necessary the investigating authority may request other information.

249. The correspondence on the implementation if this subsection and submission of information upon request of the investigating authority is maintained in the Russian language. Certain company details (indicators) that include foreign names may be submitted using the letters from the Latin alphabet.

250. Preferably the information shall be submitted using electronic medium. If there is no opportunity to submit information in the electronic medium, a hard copy shall be provided. Information that has been requested in the table format (statistical and customs information) shall be submitted in the format specified in the request of the investigating authority. In case where the submission of information in such a format is not possible, the authorised authorities of the Member States, diplomatic and trade representations of the Member States in the third countries shall notify the investigating authority and submit the requested information to investigating authority and shall provide requested information in other format.

251. Requests for submission of information by the authorised authorities of the Member States, diplomatic and trade representations of the Member States in the third countries are made in writing on the blank of the investigating authority with indication of the purpose, legal grounds and the time period for submission of information and are signed by the head (deputy of head) of the investigating authority.

252. The information upon request of the investigating authority is submitted by the authorised authorities of the Member States, diplomatic and

trade representations of the Member States in the third countries free of charge.

253. The information is transferred in the ways agreed between the authorities that exchange information and that are available at the moment of transfer of information and ensure safety and protection of information from unauthorised access. In case where the information is transferred by the fax the original copy shall be sent by mail.

9. Confidential Information

254. The information classified by the legislation of the Member States as confidential information (including commercial, tax and other confidential information), except information constituting state secrets or confidential information for internal use, shall be submitted to the investigating authority in compliance with the requirements specified by the legislation of the Member States in respect of such information.

The investigating authority shall provide the appropriate treatment in respect to such information.

255. The information submitted by the interested party to the investigating authority shall be treated as confidential providing the justification that disclosure of such information will provide a competitive advantage to a third party or will entail adverse effects to the party submitted such information or to the person from whom such information has been received.

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

Non-confidential version should be sufficiently detailed for the understanding of the essence of confidential information submitted.

In exceptional cases, when interested party is not able to provide a non-confidential version of confidential information, it has to provide the foundation with detailed argumentation that the submission of non-confidential version is impossible.

257. In case, when the investigating authority determines that evidence provided by the interested party can’t be considered as confidential information, or in case the interested party does not submit the non-confidential version of confidential information without justification of the impossibility to provide the non-confidential version of confidential information or submit the information that can’t be considered as such justification, the investigating authority may not consider such information.

258. The investigating authority shall not disclose the confidential information or pass it to the third parties without the written consent of the interested party provided such information or the authorised authorities of the Member States and diplomatic and trade representatives in the third countries referred to in the paragraph 244 of this Protocol.

The disclosure, use with the purposes of personal advantage, other misuse of the confidential information provided for the purposes of conducting the investigation to the investigating authority by the applicants, participants of the investigation, interested parties or diplomatic and trade representatives in the third countries referred to in the paragraph 244 of this Protocol, officers and employees of the investigating authority may be deprived of the privileges and immunities in accordance with the International Treaty within the Union on Privileges and Immunities and prosecuted in accordance with procedures approved by the Commission.

This Protocol does not preclude the investigating authority to disclose the reasons underlying the decisions of the Commission, or the evidence, which was considered by the Commission, to the extent necessary to explain such reasons and evidences for the Court of the Union.

The terms of use and protection of the confidential information by the investigating authority are approved by the Commission.

10. Interested Parties

259. For the purposes of the investigation interested parties shall include:

1) a producer of the like or directly competitive product (for safeguard investigation) or the like product (for anti-dumping or countervailing investigation) in the Member States;

2) business association a majority of the members of which are producers of the like or directly competitive product (for safeguard investigation) or the like product (for anti-dumping or countervailing investigation) in the Member States;

3) association the members of which account for more than 25 percent of the total volume of production of the like or directly competitive product (for safeguard investigation) or the like product (for anti-dumping or countervailing investigation) in the Member States;

4) an exporter or foreign producer or the importer of the product subject to investigation, and an association of foreign producers, exporters or importers a majority of the members of which are producers, exporters or importers of such product from exporting third country or the country of origin of this product;

5) competent authority of exporting third country or of the country of origin of the product;

6) consumers of the product subject to investigation (if they use such product in the process of manufacture) or associations of such consumers in the Member States;

7) public association of consumers (if the product is commonly consumed by natural persons).

260. Interested parties shall act in the course of investigation on their own authority or through duly authorised representative.

If interested party acts in the course of investigation through authorised representative the investigating authority provides the interested party with all information related to the subject matter of the investigation only through this representative.

11. Notice of the Decisions Taken in the Course of Investigation

261. The investigating authority shall publish on the official website of the Union on the Internet the following notice of the decisions taken in the course of investigation:

of the initiation of investigation;

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

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

of completion of safeguard investigation;

of completion of the investigation based on the results of which the investigating authority establishes that there are grounds for the imposition of anti-dumping or countervailing measure or that the approval of the relevant undertakings is practical;

of termination or suspension the investigation as a result of approval of relevant undertakings;

of termination of the investigation based on the results of which the investigating authority establishes the absence of grounds for the imposition of safeguard, anti-dumping or countervailing measures;

of other decisions taken in the course of investigation.

Such notices are also sent to the competent authority of exporting third country and to other interested parties known to the investigating authority.

262. The notice of the initiation of investigation is published not later than 10 business days after the adoption by the investigating authority of the decision on the initiation of investigation and shall include:

1) full description of the product subject to investigation

2) name of exporting third country

3) short description of the evidence of increased imports to the customs territory of the Union and of serious injury to the domestic industry of the Member States or treat thereof (in cases where the decision on the initiation of safeguard investigation is taken);

4) short description of the evidence of dumped or subsidized imports to the customs territory of the Union and of material injury to the domestic industry of the Member States or treat thereof (in cases where the decision on the initiation of anti-dumping or countervailing investigation is taken);

5) address where interested parties may send their opinion or

information relevant to the investigation;

6) the period which comprises 25 calendar days and within which the investigating authority accepts from interested parties statements of intent to participate in the investigation

7) the period which comprises 45 calendar days and within which the investigating authority accepts from interested parties requests for the holding of public hearing;

8) the period which comprises 60 calendar days and within which the investigating authority accepts from interested parties the comments and information relevant to the investigation in writing.

263. Notice of the imposition of provisional safeguard, provisional anti-dumping or provisional countervailing duty is published not later than 3 business days after the adoption of this decision by the Commission and shall include the following information:

1) name of the exporter of the product subject to investigation or name of exporting third country (in cases of inability to provide the name of exporter);

2) description of the product subject to investigation sufficient for carrying out the procedures of customs control;

3) grounds for positive determination of dumped imports with the indication of dumped margin and description of the grounds for the choice of the methodology for the calculation and comparison of normal value of product and export price (in cases where provisional anti-dumping duty is imposed);

4) grounds for positive determination of subsidized imports with description of the existence of subsidy and indication of the calculated

amount of subsidization per unit (in cases where provisional countervailing duty is imposed);

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

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

7) grounds for positive determination of increased imports (in cases where provisional safeguard duty is imposed).

264. Notice of possible application of anti-dumping duty in accordance with paragraph 104 of this Protocol or notice of possible application of countervailing duty in accordance with paragraph 169 of this Protocol shall include:

1) description of the product subject to investigation sufficient for carrying out the procedures of customs control;

2) name of the exporter of the product subject to investigation or name of exporting third country (in cases of inability to provide the name of exporter);

3) short description of the evidence that conditions specified in paragraph 104 and 169 of this Protocol are fulfilled.

265. Notice of the completion of safeguard investigation is published by the investigating authority not later than 3 business days after the date of the completion of the investigation and shall include the main conclusions

made by the investigating authority based on the information available for it.

266. Notice of the completion of the investigation based on the results of which the investigating authority establishes that there are grounds for the imposition of anti-dumping or countervailing measure or that the approval of the relevant undertakings is practical is published not later than 3 business days after the date of the termination of the investigation and shall include:

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

2) reference to the facts based on which this determination was made;

3) information specified in paragraph 263 of this Protocol;

4) indication of the reasons for acceptance or refusal to accept in the course of investigation arguments and requests of exporters and importers of the product subject to investigation;

5) identification of the reasons for taking decisions in accordance with paragraphs 48-51 of this Protocol.

267. Notice of the termination or the suspension of investigation as a result of approval of the relevant undertakings is published not later than 3 business days after the date of the termination or the suspension of investigation and shall include non-confidential version of these undertakings:

268. Notice of the termination of the investigation based on the results of which the investigating authority establishes the absence of the grounds for imposition of safeguard, anti-dumping or countervailing measure is published not later than 3 business days after the date of the termination of the investigation and shall include:

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

2) reference to the facts based on which this determination specified in subparagraph 1 of this paragraph was made.

269. Notice of the termination of the investigation based on the results of which the investigating authority takes the decision on non-application of measure in accordance with paragraph 272 of this Protocol is published not later than 3 business days after the date when this decision was taken and shall include the explanation of the reasons for taking by the Commission of the decision on non-application of safeguard, anti-dumping or countervailing measure with the identification of facts and conclusions based on which such decision was taken.

270. Investigating authority provides for all the notifications specified in Marrakesh Agreement Establishing World Trade Organization of April 15, 1994 which are relative to investigations and applied measures being duly sent to the competent authorities of World Trade Organization.

271. Provisions of paragraphs 261-270 of this Protocol shall be applied *mutatis mutandis* to the notices of the initiation and the completion of reviews.

VII. Non-application of the Safeguard, Anti-dumping and Countervailing Measures

272. The Commission on the results of the investigation may decide not to apply safeguard, anti-dumping or countervailing measures, even if the application of such measure meets the criteria set forth in this Protocol.

Such decision may be taken by the Commission if the investigating authority, based on the analysis of all the information provided by the interested parties, comes to the conclusion that the application of this measure may affect the interests of Member States. Such decision may be revised in case of any changes in the reasons which were the basis for taking such decision.

273. Conclusion referred to in paragraph 272 of this Protocol, shall be based on a results of a cumulative effects on interests of the domestic industry of the Member States, consumers of the product subject to investigation (if they use such product in the production process), and associations of such consumers in the Member States, public associations of consumers (if such product is primarily consumed by natural persons) and importers of this product. In this case such a conclusion can only be made after the said parties were given the opportunity to submit their comments on the matter in accordance with paragraph 274 of this Protocol.

When preparing such a conclusion a special importance should be given to the elimination of the distorting effects of increased, dumped or subsidized imports in the ordinary course of trade and competition on the relevant market of the Member States and the state of industry of the Member States.

274. For the purposes of the application the provisions of paragraph 272 of this Protocol the producers of the like or directly competitive products (in the special safeguard investigation) or like products (in the anti-dumping or countervailing investigation) in the Member States, their associations, importers and the associations of importers of the product subject to investigation, consumers of the product subject to investigation (if they use such product in the production process), and the associations of such

consumers in the Member States, public associations of consumers (if such product is primarily consumed by natural persons) have the right within the period specified in the notice, published in accordance with paragraph 262 of this Protocol, to submit comments and information on the matter. Such comments and information or their non-confidential version, as appropriate, shall be provided for information of the other interested parties, referred to in this paragraph, which may submit their response comments.

The information provided in accordance with this paragraph shall be taken for consideration regardless of its source, if there is objective evidence supporting its reliability.

VIII. Final Provisions

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

275. The procedure and specificity of appealing the decisions of the Commission and (or) action (or inaction) of the Commission in connection with application of special safeguard, anti-dumping and countervailing measures are determined by the Statute of the Court of the Union (Annex 2 to the Treaty) and by the Regulation of the Court of the Union.

2. Enforcement of Court Decisions

276. The Commission shall take the necessary enforcement measures to comply with the Court of the Union decisions in connection with the application of special safeguard, anti-dumping and countervailing measures. The decision of the Commission recognized by the Court of the Union not to conform with the Treaty and (or) international treaties within the Union, shall

be brought by the Commission into conformity with the Treaty and (or) international treaties within the Union by carrying out the review on the Commission own initiative of the provisions, required for the implementation of the decision of the Court.

When carrying out the review *mutatis mutandis*, the provisions relating to the investigation are applied.

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

3. Administration of Investigation

277. For the purposes of implementation of this Protocol the Commission shall take the decisions on initiation, conducting, completion and (or) suspension of the investigation. The decisions adopted by the Commission shall not change or contradict the provisions of the Treaty.