

Annex 5

On approval of the Rules for conducting examinations, preceding imposition of safeguard, countervailing or antidumping measures

Resolution of the Government of the Republic of Kazakhstan N 1374 of September 9, 2000

("Kazakhstanskaya Pravda" dated 15.09.2000, N 235-236) (CL of the Republic of Kazakhstan, 2000, N 38-39, p. 453)

With purpose of implementation of the Laws of the Republic of Kazakhstan dated December 28, 1998 "On measures of protecting domestic market while importation of goods", dated July 13, 1999 "On antidumping measures" and dated July 16, 1999 "On subsidies and countervailing measures" the Government of Kazakhstan decrees:

1. To approve the attached Rules of conducting examinations, preceding imposition of safeguard, countervailing and antidumping measures.
2. The present Resolution shall come into effect from date of its signature and shall be subject to the official publication.

Prime Minister
Of the Republic of Kazakhstan

Approved by

Resolution of the Government
Of the Republic of Kazakhstan N 1374
Of September 9, 2000

Rules of conducting examinations,
preceding imposition of safeguard,
countervailing and antidumping measures

1. General provisions

1. The present Rules, being developed as stipulated by the Laws of the Republic of Kazakhstan " On measures of protecting domestic market while importation of goods ", " On subsidies and countervailing measures " and "On antidumping measures ", shall specify procedure for conducting examinations for imposition of safeguard, countervailing or antidumping measures (further - examinations), relations, rights and obligations of public authorities and stakeholders in order to protect interests of domestic manufacturers and support in conducting examinations.

2. The notions, provided for aforementioned Laws, are used in the Rules.

Section 1. Safeguard measures Chapter 1. Accepting request for consideration

3. An examination, preceding imposition of safeguard measures, shall be made according to:

- 1) commission set by the Government of the Republic of Kazakhstan;
- 2) upon request of the domestic manufacturer or association of producers on application of safeguard measures.

4. The obligatory condition to proceed with examination procedure on imposition of safeguard measures upon request of domestic manufacturer shall be determination by the authorized body – the Committee for antidumping control of the Ministry of Energy, Industry and Trade of the Republic of Kazakhstan (further – the Committee) - that share of the domestic producers, who expressed their opinion in the written request, is more than fifty percents of the whole volume of production of similar or directly competing merchandise in the Republic of Kazakhstan. Here, the share of the commodity, produced by the domestic producers, supporting the request, is more than twenty five percents of the volume of every similar merchandise or directly competing goods.

5. The request on conducting examination shall be submitted in writing. The application shall be submitted in a form, set forth by Annex 1.

6. Date of registration of application in the Committee shall be considered to be date for accepting the request for consideration. The application shall be supported by the documents specified in Annex 2.

7. Upon receipt of an application, the Committee shall examine reliability and availability of the documents, attached to an application, within forty five calendar days from date of acceptance of request, according to Annex 1 and prepare resolution on appropriateness of conducting examination or rejection of thereof.

8. In case of not sufficient data, contained in the request for examination, preceding imposition of safeguard measures, the Committee shall notify an applicant about it within ten days and provide with opportunity to change or add its application.

9. When an applicant forwards information that adds to or changes the previously submitted application, the date of registration of additions or changes to the request in the Committee shall be considered as the date of accepting application for consideration.

10. Applicant shall have right to recall application before examination procedure is started. In this case the latter shall be considered as not being submitted.

11. Applicant shall bear responsibility for the reliability of information, specified in the application.

12. The Committee shall notify an applicant within ten days in case of decision on refusal to conduct examination with specification of reasons and grounds for refusal.

13. Grounds to refuse to conduct examination:

- 1) not adequate proofs of serious damage or its threats for the domestic producers or similar or directly competing merchandise;
- 2) not observing paragraph 4 of the Rules.

Chapter 2. Examination procedure.

Rights and obligations of the Committee and stakeholders

14. The Committee shall notify stakeholders on an anticipated examination within thirty calendar days from the moment of making decision on conducting examination.

15. The notification shall contain the following:

- 1) country (countries) of exporter and name of commodity that serves as an examination object;
- 2) date of the examination;
- 3) justification for the examination;
- 4) brief summary of facts, confirming appropriateness of request;
- 5) address, to which stakeholders must send their materials;
- 6) dates, when stakeholders may submit their materials.

16. When share of one Kazakhstan manufacturer that supported request on application of safeguard measures, exceeds thirty five percents of Kazakhstan production of similar or directly competing commodity or in case if the whole volume of imports of merchandise which is an examination object, is less than twenty five percents of the whole volume of marketing of similar or directly competing commodity in a domestic market of the Republic of Kazakhstan, a decision of executive authorities in field of monopoly

regulating policy shall be required concerning consequences of those specified measures for competitiveness in the domestic market of the Republic of Kazakhstan.

17. Examination shall be finalized within nine months.

18. From moment of notification the stakeholders shall respond in writing in state or other language as agreed.

19. During examination the Committee shall have right to request additional information from stakeholders. The response shall be given within thirty calendar days from receipt of the request with indication of sources of such information.

20. Upon request of the Committee public authorities and other agencies shall assist in conducting examination and provide with merchandise samples (to be returned) and required information, including the confidential one.

21. Confidential information, given to the Committee, shall not be disclosed without written consent of the stakeholders.

22. Stakeholders shall provide with written explanations to the confidential information.

23. Explanations shall include sufficient details to understand essence of the information. In the exceptional cases, they shall contain reasons why more detailed non-confidential information may not be provided.

24. Each interested party shall have right to provide any

45. Grounds to reject conducting examination:

- 1) dumping difference is less than five percent of export price;
- 2) volume of supply of dumping merchandise and material damage caused by it are low, that is supply of commodity from a country with respect of which an application is submitted, is less than three percent of whole supply of similar merchandise in Kazakhstan, except for cases, when an aggregate

62. When the Government of the Republic of Kazakhstan makes decision to apply antidumping measures or decision to cancel them, the Committee shall inform authorized body of country of origin of goods, which are subject to examination about the decision made.

63. During examination, upon request of the stakeholders, the Committee shall provide them with opportunity to meet parties having adverse interests to discuss examination materials and provide with additional information.

64. Verbal information shall be accepted by the Committee upon its confirmation in writing within ten days after the meeting.

65. Absence of any party concerned during such meetings shall not cause material damage for their interests during examination process.

66. Stakeholders shall have right to appeal against decisions and actions of the Committee, accepted during examination, in accordance with the legislation of the Republic of Kazakhstan.

Chapter 3. Price obligations

67. Examination, preceding imposition of antidumping measures, can be suspended or cancelled without imposition of temporary antidumping duties or antidumping duties upon receipt from supplier (in writing) of voluntary obligation to review price or termination of import of commodity using dumping prices, subject to examination which eliminate consequences of dumping.

68. Price obligations shall be proposed by the Committee.

69. Supplier shall not be forced to take such obligations.

70. Price obligations shall be taken by the Committee after making preliminary positive decision on presence of dumping and material damage or threat of it.

71. Obligations * (obligation top7a7eayshall notee, a -1sit of it.)Tj 0 dbligationitttc8rrfillment is * actically unreal

shall inform p7a7eays.

72. The Committee shall have right to terminate examination in case of faTj rrfillment of the price obligations tion top7a7eays.

73. Examination shall be continuigain case if:

2) upon initiative of the Committee.

74. Obligations, specifiiagain paragraph 67 of the present rules, shall automatically become invalid in case of decision is made on absence of dumping or material damage or its threat, ex-1si for cases when absence of dumping or material damage is a result of price obligation.

75. After a -1sitnce of a price obligation, the Committee shall submit notifications about that to every party concerned with observance of information confidentiality.

76. The Committee all require from n top7a7eayshwhose obligation, specifiiagain paragraph 67 of the present Rules, was officially accepted, regular information on rrfillment of such obligation.

Refusal to provide such information shall be considerigaas a violation of an obligation.

77. The Committee shall have right to check obtainigainformation on rrfillment of the specifigaobligation. During controlling process the customs authorities shall assist the Committee in providing information on rrfillment of price obligations tiop7a7eayss.

Chapter 4. Final provisions

78. Imposition, * review and cancellation of antidumping measures shall be implementigation toResolution of Government of the Republic of Kazakhstan upon decision of the Committee.

79. According to the results of examination the Committee shall submit relevant conclusion to the Government.

80. Conclusion of the Committee must contain the following information:

1) ppecification of a commodity being an examination object, with indication of the nini-unit code of the Harmonized System of the CIS;

- 2) evidences of the increased dumping importation of a commodity to the territory of the Republic of Kazakhstan;
- 3) proofs of serious damage or threat of it for the domestic manufacturers of similar commodity;
- 4) evidences of cause-and-effect relation between material damage for the domestic manufacturers and the increased volume of dumping importation of a merchandise;
- 5) description of measures for protection of economic interests of the Republic of Kazakhstan: antidumping measure, that could be implemented through imposition of antidumping duty, including temporary antidumping duty, or taking obligations;
- 6) anticipated date of imposition and duration of measures, as well as draft plan of activities for adjusting domestic producer to work under conditions of foreign competition for the period of validity of those measures, which is developed by an applicant on behalf of the domestic producer or proposal on non-application of measures in case if their imposition, as it became known during examination, may negatively effect interests of local stakeholders, economy of the Republic of Kazakhstan in whole or interests of considerable part of consumers of a merchandise, being an examination object, or not appropriate due to any essential reasons of state significance.

81. Duration of an examination shall not exceed nine months.

82. Re-examination in order to identify need of continuation of application of antidumping duties shall be conducted upon initiative of the Committee or based on the request from stakeholders according to the order, stipulated by the present Rules, not later than forty five days before expiration of antidumping duties.

83. Examination for identification of dumping, material damage and cause-and-effect relation between them shall be finalized by conclusion of the Committee.

84. The conclusion shall be forwarded to the Government, with respect to:

- 1) termination of antidumping examination without undertaking any measures;
- 2) acceptance of price obligations by exporter and (or) producer;
- 3) imposition of antidumping duties.

85. Grounds for termination of examination by the Committee without imposing antidumping measures:

- 1) lack of adequate proofs of dumping or material damage or threat of its occurrence;
- 2) dumping difference is less than five percent of export price or volume of dumping importation (actual or potential) or size of material damage or threat of its occurrence are insufficient.

The Committee shall publish notice concerning termination of examination without imposing antidumping measures in the official papers.

86. Proposal of the Committee, prepared in form of conclusion shall be grounds for the Government to make decision on extension of duration of antidumping duties.

Section 3. Countervailing measures

Chapter 1. Acceptance of application for consideration

87. Examination, preceding imposition of countervailing measures, shall be conducted:

- 1) upon request of the domestic manufacturer or association of manufacturers concerning application of countervailing measures;
- 2) at the initiative of the Committee, provided that there are adequate evidences of specific subsidies and material damage or its threat, made by supply of imported goods, subsidized by foreign country (alliance of foreign countries), and their cause-and-effect relation.

88. A mandatory provision to launch examination procedure of imposing countervailing measures upon request of domestic manufacturers shall be identification by the Committee that share of domestic manufacturers who expressed their opinion towards this application in writing is more than

fifty percent of the production volume of similar goods by the domestic producers. Here, a share of commodity, produced by domestic manufacturers that supported a request is more than twenty five percent of whole volume of similar goods produced by domestic manufacturers.

89. Request for examination shall be submitted in writing. Request shall be submitted in a form, set forth by Annex 5.

90. Application shall be considered as accepted and applicant shall be notified about that in writing provided the Committee recognizes adequateness of data which is contained in application. Application shall be accompanied with documents according to Annex6.

91. If the data, contained in the request for examination that precedes imposition of antidumping measures, is not sufficient, the Committee shall

6) dates, within which the stakeholders shall submit their petition to the Committee to be able to get insight into case, to express their opinions and to meet parties concerned:

103. The Committee shall send inquiries to the parties concerned.

104. The response shall be given within a month upon receipt of the inquiry.

105. Inquiry shall be considered to be received in seven days after posting or passing it to the representative of stakeholder.

106. Upon receipt of notification the stakeholders shall respond in writing in state or other language as agreed.

107. During examination the Committee shall have right to request further information from the parties concerned. The response shall be provided within a month upon receipt of a request and shall specify source of such information.

108. Stakeholders must assist in conducting examination and upon request of the Committee shall provide with the required information, including a confidential one.

109. Confidential information may not be disclosed, used by the Committee for personal purposes, transferred to third parties, as well as to other state bodies, except for cases, provided by the legislative acts of the Republic of Kazakhstan.

110. Stakeholders that provide confidential information must also provide written explanations of non-confidential character related to such information.

111. Explanations include adequate details to be able to understand nature of information. In the exceptional cases, must contain reasons why more detailed non-confidential information may not be provided.

112. Stakeholder shall have right to provide with any other evidences.

113. Any information related to an examination shall be presented in writing.

114. The Committee shall forward notification on its intention to impose temporary countervailing measures to all stakeholders and official bodies of that countries after preliminary conclusion on presence of importation of commodity, subsidized by the foreign state (alliance of foreign states) is made.

115. Within ten days upon receipt of notification the stakeholders, involved in the examination, shall have right to comment in writing with respect to justification for imposing countervailing temporary measures.

116. The Committee may take comments into consideration or reject them during examination.

117. In order to examine reliability of information or obtain further materials (collection of missing information) the Committee upon agreement with stakeholders may conduct examination in the territory of the country of foreign exporter site and (or) merchandise producer subject to examination.

118. On the basis of preliminary conclusion on presence of imported commodity, which is subsidized by a foreign country (alliance of foreign states) and material damage made by them or threat of its occurrence, made by the Committee, but not less than in two months period from launch of examination, the Government shall make decision on imposition of temporary countervailing measures.

119. Duration of examination shall not exceed six months from date of procedure started.

120. After the Government of the Republic of Kazakhstan makes decision on imposition of countervailing measures or decision on their termination, the Committee shall communicate authorized body of country of origin of goods, subject to examination and inform on the decision made.

121. Stakeholders shall have right to solicit for conducting hearings with purpose of getting insight into materials of the case and arguments of other party.

122. Stakeholders shall have right to appeal against decision and actions of the Committee, made during examination, in accordance with the legislation of the Republic of Kazakhstan.

123. Examination, preceding imposition of countervailing measures, may be suspended or terminated without imposition of temporary countervailing measures:

1) government of country of origin or exportation shall agree to eliminate or limit subsidy;

2) supplier shall be obliged to review its prices or cancel exportation of merchandise, subsidized by foreign country (alliance of foreign states).

124. Obligations of supplier shall be accepted in writing.

125. Price obligations shall be proposed by the Committee.

126. Supplier shall not be forced to take such obligations.

127. Price obligation shall be accepted by the Committee after preliminary decision on the presence of specific subsidy and material damage or its threat for domestic producers is made.

128. Obligations shall not be taken if the Committee recognizes them to be practically unrealizable due to large number of suppliers or other reasons that should be communicated to the supplier by the Committee.

129. The Committee shall have right to demand data on price obligations taken by the supplier and check reliability of the data supplied.

130. In case a supplier breaks a price obligation the Government of the Republic of Kazakhstan upon proposal of the Committee shall have right to immediately impose temporary measures, without preliminary notice.

131. In case of fair fulfillment of a price obligation taken by the supplier the Committee shall have right to terminate examination.

132. Examination shall be continued if:

1) supplier who takes an obligation insists on it;

2) at the initiative of the Committee.

whole or interests of considerable part of consumers of a merchandise, being

The Committee for antidumping control
Of the Ministry of Energy, Industry and Trade
Of the Republic of Kazakhstan

Application
For conducting examination to apply antidumping measures
(date of applying)

We request to conduct examination in order to possible application of
antidumping measures for _____
(name of merchandise)

HS classification code

Manufactured by _____

(name of company, organizational structure, date and number of registration
of legal entity with Justice authorities of the Republic of Kazakhstan)

1. Description of the import (_____1,013Dr013Dr013Dr01umping cont_____)Tj 0 -1

To the Rules for conducting
examination preceding imposition of
safeguard, countervailing
or antidumping measures

List of documents (information), attached to the application on
imposing antidumping measures

1. Information about applicant, level and production costs of the merchandise in the Republic of Kazakhstan, which is supposed to be dumping imports (further-merchandise), for the three previous years, where statistical data, including examination period, are available. The application, submitted on behalf of the domestic manufacturer, shall indicate list of all known Kazakhstan manufacturers of the commodity with specification of shares taken by every producer in the overall domestic production. The list and forms of information, attached to the application, shall be set forth by the Committee.

2. Specification of a commodity imported to the territory of the Republic of Kazakhstan, with indication of nine-unit code of the Harmonized

measure proposed by the applicant.

Notes:

1. Information according to paragraphs 1, 3-5 and 8 shall be presented for every month during an examination period.

2. For the purpose of comparability the cost parameters shall be indicated both in tenge and US dollars (on the rate of the National Bank at the moment of their identification).

3. The information submitted shall be certified by heads of organizations that support an application and their staff who is in charge of accounting.

4. Units of measures of a merchandise based on quantities, presented in the applicant's information, shall be comparable with units of measures, applied in the official statistics.

Annex 5

The Committee for antidumping control
Of the Ministry of Energy, Industry and Trade
Of the Republic of Kazakhstan

Application

For conducting examination to apply antidumping measures
(date of applying)

We request to conduct examination in order to possible application of countervailing measures for

_____ (name of merchandise)
HS classification code

Manufactured by _____

_____ (name of company, organizational structure, date and number of registration of legal entity with Justice authorities of the Republic of Kazakhstan)

1. Description of the imported merchandise, subject to examination, name of country * (interval of) Tjouniesgrder mined mn of

Notes:

All the forwarded materials shall be certified by the head of organization or a person, acting as head of organization, and presented with supporting letter in the official form and serial numbering.

Notarized copies of constituent documents shall be attached to the application.

Signature of the head of organization

Seal

Annex 6

