

FEDERAL LAW NO. 280-FZ OF DECEMBER 30, 2006 ON AMENDING THE FEDERAL LAW ON SPECIAL PROTECTIVE, ANTI-DUMPING AND COMPENSATION MEASURES IN THE IMPORT OF GOODS

Passed by the State Duma on December 8, 2006

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Article 1

To amend Federal Law No. 165-FZ of December 8, 2003 on Special Protective, Anti-Dumping and Compensation Measures in the Import of Goods (Sobraniye zakonodatelstva Rossiiskoi Federatsii, 2003, No. 50, Item 4851; 2006, No. 8, Item 854) as follows:

1) in Item 13 of Article 2 the word "more than" shall be replaced with the words "not lower than";

2) in Part 1 of Article 6 the words: " or consumption" shall be deleted;

3) in Part 1 of Article 8 the words: "When, prior to completion of investigation, the body conducting the investigation, has established that" shall be replaced with the words: " In case of a critical situation within a sector of the Russian economy, when";

4) Paragraph Two of Part 5 of Article 12 shall, following the words: " of this Part" be supplemented with the words: " of Part 5 of Article 17",;

5) in Article 13:

a) Part 3 shall read as follows:

"**3.** In analyzing the scope of dumping import, the body in charge of investigations, shall establish whether a substantial increase has occurred in the dumping import of the goods in question (either in absolute figures or in terms of production or consumption of similar goods in the Russian Federation).

In analyzing the impact of dumping import upon the prices of similar goods in the market of the Russian Federation, the investigating bodies, shall identify the following factors:

Whether the prices of goods subject to dumping import were substantially lower than those of similar goods in the market of the Russian Federation;

Whether the dumping import brought about a substantial reduction in prices of similar goods in the market of the Russian Federation;

Whether the dumping import was a substantial obstacle to the rise in prices of similar goods in the market of the Russian Federation which would have occurred in the absence of dumping import.

Notably, not a single factor nor several factors identified as a result of analysis of the impact of dumping import upon the prices of similar goods in the market of the Russian Federation nor a substantial increase in the scope of dumping import may be of crucial importance for the purposes of determining the damage sustained by a sector of the Russian economy due to dumping import."

b) Part 5 shall be supplemented with Paragraph reading as follows:

"Importantly, not a single factor, nor several factors identified as a result of analysis of the impact of dumping import upon a sector of the Russian economy, may be of crucial importance for the purposes of determining the damage to a sector of the Russian economy due to dumping import.";

c) Paragraph One of Part 8 after the words "takes account of" shall be supplemented with the words: "all the available factors included";

6) Part 3 of Article 16 shall read as follows:

"3. When the investigating bodies makes use of the limitation provided under Part 2 of Article 29 of this Federal Law, the rate of the anti-dumping duty applied in respect of foreign exporters or foreign manufacturers of goods subject to dumping import not selected for determining an individual dumping margin but who furnished requisite data within the time limits set for furnishing the same in the course of investigation, shall not exceed the amount of the weighted average dumping margin fixed in respect of selected foreign exporters or foreign manufacturers of goods subject to dumping import.

If no individual dumping margin was fixed in respect of foreign exporters or foreign manufacturers of goods subject to dumping import, except for foreign exporters or foreign manufacturers of goods subject to dumping import not selected for determining an individual dumping margin but who furnished requisite data within the time-limits set for furnishing the same in the course of investigation and also in cases when foreign exporters or foreign manufacturers of goods subject to dumping import refuse to provide to the investigating body data required for the purposes of conducting the investigation or fail to provide those data within the time limits fixed under Part 3 of Article 26 of this Federal Law, the anti-dumping duty shall be applied at the rate to be arrived at by comparing the highest rate from the list of rates fixed for foreign exporters and foreign manufacturers of those goods in respect of which an individual dumping margin was determined with the rate arrived at by collating the weighted average normal value of goods subject to dumping import determined in the course of investigation in accordance with Article 12 of this Federal Law with the weighted average export price of goods subject to dumping import.

In making such comparison, one shall choose the highest rate of the anti-dumping duty.

7) Article 17 shall read as follows:

"Article 17. Period of validity and revision of the anti-dumping measure

1. The anti-dumping measure shall be applied by decision of the Government of the Russian Federation in the amount and within the period which are necessary to make good the damage caused to a sector of the Russia economy by dumping import.

2. The validity of the anti-dumping measure shall not exceed five years from the commencement of that measure or from completion of the repeated investigation undertaken in connection with changed circumstances and at the same time related to an analysis of dumping import and associated damage inflicted to a sector of the Russian economy or in connection with the expiration of the period of the anti-dumping measure.

3. Decision to extend the period of the anti-dumping measure shall be taken by the Government of the Russian Federation on the basis of a report submitted by the investigating body on the results of repeated investigation in connection with the expiration of the period of the anti-dumping measure. Such repeated investigation shall be conducted by the body in charge of investigations on the basis of application in writing filed in accordance with the provisions of Article 25 of this Federal Law or on the initiative of the investigating body.

Repeated investigation in connection with the expiration of validity of the anti-dumping measure shall be conducted in case of availability either in an application filed in accordance with the provisions of Article 25 of this Federal Law or upon receipt by the investigating body of data regarding the possibility of resumption of dumping import and infliction of damage to a sector of the Russian economy upon termination of the anti-dumping measure.

Application for conducting repeated investigation for the purposes of extending the period of the anti-dumping measure shall be filed not later than six months prior to the expiration of the period of the anti-dumping measure.

In establishing the possibility of resumption of dumping import and infliction of damage to a sector of the Russian economy upon termination of the anti-dumping measure, the investigating body shall take into account all the prevailing factors. Among such factors, at least one of the following factors shall be considered:

the maintaining of dumping import and infliction of damage to a sector of the Russian economy during the validity of the measure;

the availability of the link between making good the damage to a sector of the Russian economy and application of the anti-dumping measure either wholly or in part;

the availability of such a status of foreign manufacturers and (or) such a situation in the markets of goods which may lead to resumption of dumping import and infliction of damage to a sector of the Russian Economy.

The necessity to re-calculate the amount of the dumping margin and the amount of anti-dumping duty in conducting repeated investigation in connection with the expiration of the period of the anti-dumping measure shall be determined by the investigating body, proceeding from information that it may have at its disposal.

Repeated investigation in connection with the expiration of the period of the anti-dumping measure shall be completed within twelve months from its commencement. Pending completion of such repeated investigation the Government of the Russian Federation shall extend the period of the anti-dumping measure. If, the results of that repeated investigation indicate that there are no grounds for applying the anti-dumping measure, the amounts of the anti-dumping duty charged within the period for which the antidumping measure was extended, shall be paid back to the payer in the procedure established under the customs legislation of the Russian Federation on refund of customs payments.

4. On the initiative of the investigating body or by application of a person concerned (when no less than a year has passed following the introduction of the anti-dumping measure) repeated investigation may be undertaken with a view of determining the necessity to continue the anti-dumping measure and/or to revise it, including revision of the rate of individual anti-dumping duty in connection with changed circumstances.

Depending on the purposes of filing an application for said repeated investigation, such application shall contain the evidence of the fact that in connection with changed circumstances:

continuation of the anti-dumping measure to counter dumping import and to make good the damage inflicted to a sector of the Russian economy by dumping import is no longer required;

the existing scope of the anti-dumping measure is insufficient to counter dumping import and make good the damage inflicted to a sector of the Russian economy by dumping import.

Repeated investigation due to changed circumstances shall be completed within twelve months from its commencement.

5. Repeated investigation may also be conducted for purposes of determining an individual dumping margin vis-a-vis foreign exporter or foreign manufacturer which did not supply the goods being the subject of investigation, in the period when original investigation was conducted. Such repeated investigation may be launched by the investigating body upon filing by said exporter or manufacturer of application for repeated investigation.

The application mentioned herein shall contain the evidence of the fact that a foreign exporter or foreign manufacturer of goods is not associated with foreign exporters and foreign manufacturers of goods which are subject to the anti-dumping measure and also the evidence of the fact that the given exporter or manufacturer of goods are carrying out supplies of goods being the subject of investigation, into the Russian Federation or bound under contractual obligations on supplies of those goods into the Russian Federation in the substantial scope, in case of termination of which the given exporter or manufacturer of goods may sustain considerable losses.

During repeated investigation with a view of arriving at an individual dumping margin vis-a-vis foreign exporter or foreign manufacturer, no anti-dumping measure shall be applied in respect of supplies of goods, being the subject of investigation, into the Russian Federation by the given exporter or given manufacturer.

Said repeated investigation shall be conducted within the shortest possible period. In any case that period may not exceed twelve months.

6. The provisions of Articles 26-29 of this Federal Law concerning submission of evidence related to the investigation and conduct of the investigation shall apply to repeated investigations envisaged under this Article, having due regard to appropriate differences.

7. The provisions of this Article shall apply to obligations undertaken by foreign exporter in accordance with Article 15 of this Federal Law, with due account for appropriate differences.";

8) Article 19 shall be supplemented with Part 4 reading as follows:

"**4.** Classifying a subsidy of a foreign state (union of foreign states) as a specific subsidy may be based exclusively on the evidence of availability of any of the conditions specified under Parts 1 and 2 of this Article.";

9) in Article 20:

a) Part 7 shall be supplemented with a new second sentence reading as follows: "Importantly, not a single factor, nor several factors from among the factors identified as a result of analysis of the scope of the subsidized import and the impact of the subsidized import upon a sector of the Russian economy, may be of crucial importance for purposes of determining the damage to a sector of the Russian economy by subsidized import.";

b) Part 8 shall read as follows:

"**8.** In identifying the threat of inflicting material damage to a sector of the Russian economy due to subsidized import, the investigating body shall take account of all the factors available, including the following factors:

nature, amount of subsidy or subsidies and eventual impact thereof upon the trade;

the rates of growth of subsidized imports testifying to a real possibility of further increase in that import;

The availability with the exporter of goods being the subject of subsidized imports of sufficient export capabilities or obvious inevitability of increase of same which testifies to a real possibility of increasing the subsidized import of the given goods, with due regard for the capabilities of other export markets of accepting any additional export of the given goods;

The level of prices of goods being the subject of the subsidized import, when that level of prices may bring about reduction or keeping of prices of similar goods in the market of the Russian Federation and further growth of demand for the goods being the subject of the subsidized import;

Reserves of the goods, being the subject of subsidized import, available with the exporter.

Notably, not a single factor nor several factors from among the factors specified herein may be of crucial importance for the purposes of identifying the threat of inflicting material damage to a sector of the Russian economy due to the subsidized import.

Decision on the presence of a threat of inflicting material damage to a sector of the Russian economy shall be taken in case when in the course of investigation, on the basis of the results of analysis of factors specified herein, the investigating body arrived at the conclusion regarding the inevitability of continuation of subsidized import and infliction by that import of material damage to a sector of the Russian economy in case of failure to take a compensation measure.";

10) Article 24 shall read as follows:

"Article 24. Period of validity and revision of the compensation measure

1. The compensation measure shall be applied by decision of the Government of the Russian Federation in the scope and within the period which are necessary to make good the damage to a sector of the Russian economy due to the subsidized import.

2. The period of validity of the compensation measure shall not exceed five years from commencement of application of that measure or from completion of repeated investigation which was conducted in connection with changed circumstances and was at the same time related to an analysis of the subsidized import and associated damage to a sector of the Russian economy or in connection with the expiration of the period of validity of the compensation measure.

3. Decision to extend the period of the compensation measure shall be taken by the Government of the Russian Federation on the basis of a report submitted by the investigating body on the results of repeated investigation in connection with the expiration of the period of validity of the compensation measure. Said repeated investigation shall be conducted by the investigating body on the basis of application in writing filed in accordance with the provisions of Article 25 of this Federal Law or on the initiative of the investigating body.

Repeated the investigating body in connection with the expiration of the period of validity of the compensation measure shall be undertaken with the availability in the application filed in accordance with the provisions of Article 25 of this Federal Law or upon receipt by the investigating body of data on the possibility of continuation or resumption of the subsidized import and infliction of damage to a sector of the Russian economy upon termination of the compensation measure.

Application for repeated the investigating body for the purposes of extending the period of validity of the compensation measure shall be filed not later than six months prior to the expiration of the period of validity of the compensation measure.

In establishing the possibility of continuing or resuming the subsidized import and infliction of damage to a sector of the Russian economy upon termination of the compensation measure, the investigating body shall take account of all the factors available with it. Among those factors, account shall be taken of, at least, one of the following factors:

Maintaining the subsidizing, including retaining a useful effect from earlier granted subsidies and infliction of damage to a sector of the Russian economy;

The availability of the link between making good the damage to a sector of the Russian economy and application of the compensation measure either wholly or in part;

The availability of such a status of foreign manufacturers and/or such a situation in the markets of goods which may lead to resumption of the subsidized import and infliction of damage to a sector of the Russian economy.

The necessity to re-calculate the amount of a subsidy per unit of goods and amount of the compensation duty in conducting repeated investigation in connection with the expiration of the period of validity of the compensation measure shall be determined by the investigating body on the basis of information it may have at its disposal.

Repeated investigation in connection with the expiration of the period of validity of the compensation measure shall be completed within twelve months from its commencement. Pending completion of such repeated investigation, the Government of the Russian Federation shall extend the application of the compensation measure. When the results of such repeated investigation found out that there are no grounds for application of the compensation measure, the amounts of the compensation duty charged within the period for which the compensation measure was extended, shall be refunded to the payer in the procedure established under the customs legislation of the Russian Federation on the refund of customs payments.

4. On the initiative of the investigating body or at the request of a person concerned (when no less than a year has passed after the introduction of the compensation measure) repeated investigation may be conducted with the objective of determining the need to continue the compensation measure and/or to revise it in connection with changed circumstances.

Depending upon the goals of filing an application for said repeated investigation, that application shall contain the evidence of the fact that, in connection with changed circumstances:

It is no longer required to apply the compensation measure to counter the subsidized import and make good the damage to a sector of the Russian economy due to the subsidized import;

The existing scope of compensation measure exceeds that which is sufficient to counter the subsidized import and make good the damage inflicted to a sector of the Russian economy by the subsidized import;

The existing scope of compensation measure is insufficient to counter the subsidized import and make good the damage inflicted to a sector of the Russian economy by the subsidized import.

Repeated investigation in connection with changed circumstances shall be completed within twelve months from its commencement.

5. The provisions of Articles 26-28 and 30 of this Federal Law concerning the submission of evidence related to the investigation and conduct of investigation shall apply to repeated investigations envisaged under this Article, with due regard for appropriate differences.

6. The provisions of this Article shall apply to obligations undertaken by a foreign state (the union of foreign states) or exporter in accordance with Article 22 of this Federal Law, with due account taken of appropriate differences.";

11) in Article 25:

a) Part 2 shall be supplemented with Paragraph reading as follows:

"Application specified in Part 1 of this Article may also be made by representatives of those persons enjoying in accordance with the civil legislation duly executed powers.";

b) in Paragraph Three of Part 4 the words:" and also" shall be deleted and shall be supplemented with the words:" ", and also on the basic known consumers of the given goods";

c) in Part 5:

Paragraph Four, after the words: " on the availability" shall be supplemented with the words:" and the nature";

Shall be supplemented with Paragraph reading as follows:

"The evidence of the presence of serious damage or threat of inflicting serious damage to a sector of the Russian economy (in case of filing an application for investigation prior to application of special protective measure) and the evidence of the presence of material damage or threat of inflicting material damage to a sector of the Russian economy or of substantial slowing-down in creation of a sector of the Russian economy due to dumping import or subsidized import (in case of filing an application for investigation prior to application of the antidumping measure or compensation measure) shall be based upon objective factors which characterize the economic situation of sector of the Russian economy and may be shown in quantitative figures (including the scope of production of goods and scope of its realization, share of the goods in the market of the Russian Federation, prime cost of production of goods, price of goods, data on the full use of production capacities, labor productivity, amounts of profit, profitability of production and realization of goods, on the scope of investments into sectors of the Russian economy).";

12) in Article 26:

a) Paragraph Two of Part 2 shall read as follows:

"When such evidence is insufficient to conduct investigation, such investigation may not be started.";

b) shall be supplemented with Part 2.1 reading as follows:

"2.1. Following the taking of decision to start investigation, the investigating body shall send to Russian manufacturers of directly competing goods known to it (in case of conducting investigation prior to application of special protective measure) or of similar goods (in case of conducting investigation prior to application of the anti-dumping measure or compensation measure) a list of questions to which they must provide answers for purposes of investigation.

The Russian manufacturers of directly competing goods (in case of investigation prior to application of special protective measure) or of similar goods (in case of investigation prior to application of the anti-dumping measure or compensation measure) to whom a list of questions was sent shall be given thirty calendar days from receipt by them of that list to submit their answers to the investigating body. At the motivated request made in writing by the Russian manufacturers of directly competing goods (in case of investigation prior to application of special protective measure) or of similar goods (in case of investigation prior to application of the anti-dumping measure or compensation measure), said period may be extended by the investigating body but for not more than ten calendar days.

For purposes of this Article, a list of questions shall be regarded as received by the Russian manufacturer within seven calendar days from the date of mailing of same or from delivery of same directly to the representative of the Russian manufacturer.";

c) the first sentence of Part 8 shall read as follows:

"When, over two years directly preceding the start of investigation, one Russian manufacturer who sustained the application specified in Part 1 of Article 25 of this Federal Law, accounts for more than thirty five percent of production in the Russian Federation of directly competing goods (in conducting investigation prior to application of special protective measure) or of similar goods (in conducting investigation prior to application of the anti-dumping measure or compensation measure) or when the aggregate scope of imports of goods being the subject of investigation, accounts for less than twenty five percent of the aggregate scope of realization of the given goods and directly competing goods (in conducting investigation prior to application of special protective measure) or of the given goods and similar goods (in conducting investigation prior to application of the anti-dumping measure or compensation measure) in the market of the Russian Federation, the investigating body shall get an opinion of the federal executive body in the sphere of anti-monopoly policies regarding the consequences of the impact of special protective measure, anti-dumping measure or compensation measure upon the competition in the market of the Russian Federation.";

d) Paragraph Two of Part 9 shall read as follows:

"nine months from commencement of investigation on the basis of application for using special protective measure. That period may be extended by the investigating body but for not over three months;"

13) Part 4 of Article 28 shall read as follows:

"4. The investigating body shall in good time, prior to submission to the Government of the Russian Federation of a report making proposals prepared with regard for the final results of investigation, forward to participants in investigation a nonclassified version of that report and also provide for posting it on the Internet official site of the investigating body so that participants in investigation were able to protect their interests.";

14) Part 1 of Article 31 shall be supplemented with the Paragraph reading as follows:

"consumers of goods being the subject of investigation, if they use the given goods in manufacturing products and associations of those consumers.";

15) in Part 2 of Article 33 the word "are understood" shall be replaced with the words: " may be understood";

16) in Article 35:

a) Part 3 shall read as follows:

"3. A notice of imposition of preliminary anti-dumping duty or of preliminary compensation duty shall provide explanation of the preliminary conclusion of the investigating body on the presence of the dumping import or subsidized import and the damage to a sector of the Russian economy caused thereby and also a reference to the facts and regulatory legal acts which served as a basis for taking decision to impose a preliminary anti-dumping duty or preliminary compensation duty. Besides, said notice shall specify the following information:

the denomination of foreign exporter of the goods being the subject of investigation or, when it is impossible to give those data, the denomination of a foreign state (the union of foreign states) from which the given goods are exported into the Russian Federation;

description of goods being the subject of investigation sufficient for purposes of customs clearance;

the amount of the dumping margin and detailed description of the grounds for choosing the methodology of calculation and comparing the normal value of goods and its export price;

the grounds for establishing the fact of presence of a subsidy and the estimated amount of subsidy per unit of goods;

the grounds for establishing the damage to a sector of the Russian economy;

the grounds for obtaining a positive conclusion on the presence of dumping import or subsidized import and the damage to a sector of the Russian economy caused thereby.";

b) in Part 4 the words: " on the basic conclusions" shall be replaced with the words: " setting forth therein established facts, applied legal norms and also well-motivated conclusions";

c) Part 5 shall read as follows:

"**5.** A notice of completion of the investigation whose results served as a basis for taking a decision to impose the anti-dumping duty or compensation duty or to approve the obligations specified in Part 1 of Article 15 (in case of the dumping import) or in Part 1 of Article 22 (in case of subsidized import) of this Federal Law, shall specify the information on established facts and applied legal acts, on the grounds for making by the investigating body a proposal to impose a final anti-dumping duty or final compensation duty or to approve the obligations specified under Part 1 of Article 15 (in case of dumping import) or under Part 1 of Article 22 (in case of subsidized import) of this Federal Law and also a reference to the regulatory legal acts which are proposed to serve as a basis for imposition of a final antidumping duty or final compensation duty or for approval of those obligations, with due regard for the necessity to protect the confidential information.

Besides, the notice shall contain:

Information specified in Part 3 of this Article ;

A reference to the causes of acceptance or non-acceptance in the course of investigation of arguments and requirements provided by exporters and importers of goods being the subject of investigation;

A reference to the causes of taking decisions in accordance with Parts 2 and 3 of Article 29 of this Federal Law."

Article 2

This Federal Law shall take effect upon the expiration of thirty days after its official publication.

President of the Russian Federation

V. Putin

The Kremlin, Moscow