

PROTOCOL
On Applying Special Preventive, Antidumping and Mitigating Measures in Trade
amongst State-Parties to the Customs Union.

The Government of the Republic of Belarus, the Government of the Republic of Kazakhstan, the Government of the Republic of Kirgizstan, the Government of Russian Federation and the Government of the Republic of Tajikistan, hereinafter called Parties,

Under the Customs union agreement and bilateral agreements on free trade with Customs union state-parties, and based on the provisions of Customs Union Agreement and Single Economic Space as of 28 February 1999,

In compliance with paragraph 23 of the Protocol of 2 April 1999 on introducing amendments to the Agreement on Free Trade Zone as of 15 April 1994,

With view of ensuring coordinated approach in applying special preventive, antidumping and mitigating measures as regards import of goods in mutual trade and third parties trade,

Attempting to ensure protection of domestic products, creation of competition enabling environment amongst national and foreign manufacturers, and promotion of compatibility of national products,

Seeking to minimize losses of the Customs Union state-parties (hereafter referred to as state-parties) related to measures applied to protect domestic market and national manufactures,

Governed by common norms and principles of international law, agreed on the following.

Article 1

As used herein following are key definitions:

Existing damage to national economy sector – verified evidence of general deterioration of situation in given sector of national economy occurring due to increased import of similar or competitive commodity to the customs territory of a state-party or dumping import of such commodity, or import of commodity subsidized by a respective state-party or third countries and is formulated in decreasing production capacity of such commodity, decreasing its trade in domestic market of the state-party, reducing commercial viability of such commodity production, delaying sector development of national economy of the state-party, negative impact on commodity stock, employment, wage rate, general investment activity and other indicators;

Threat of damage to a national economy sector – evidence proven obvious necessity of causing significant damage to national economy sector;

National economy sector – manufacturers of similar or firsthand competitive product in any sector of state-party economy;

Similar or firsthand competitive product – commodity classified by the same code of Foreign Trade Nomenclature of Goods of foreign economic activity of Commonwealth of Independent States and totally identical to other goods or associated with it by its functional assignment, by the way it is used, qualitative and technical parameters and other key features in such a manner that the buyer would like to replace or is about to replace such commodity by another commodity in the process of its consumption;

Special preventive measures – measures restricting import of goods in the customs territory of one of the state-party for their liberal circulation in domestic market, used by the Party through introducing quantitative restriction of import or special fee, including temporary special tax;

Special tax – a fee used in introducing special preventive measures and collected by an authorized body of a state-party over the base rate of import customs levy;

Antidumping measures – measures restricting dumping import of goods applied by the Party through implementing antidumping duties, including temporary antidumping duties or through making price commitments;

Antidumping duty – a duty used in implementing antidumping measures and collected by an authorized body of the state-party over the base rate of import customs levy;

Dumping import – import of goods based export prices below its regular cost;

Mitigating measures – measures restricting import of goods subsidized by one of the state-parties or third parties that are used by the Party through introducing countervailing duties including temporary countervailing duty or through making price commitments;

Countervailing duty – duty used in introducing mitigation measures and collected by an authorized body of the state-party over the base rate of import customs duty.

Article 2

To establish that:

Special preventive measures can be introduced in a form of quantitative import restrictions of goods or in a form of special duties;

Antidumping measures can be introduced in a form of antidumping duties or adopted price commitments;

Mitigation measures can be introduced in a form of countervailing duties or through price commitments for the period established to remove significant damage or a threat to cause damage as envisaged in the provisions of this Protocol and (or) national legislation of the state-parties.

Article 3

In the event if import of goods in the territory of a state of one of the Parties is performed in such quantities and conditions that cause significant damage or create a threat of damage to national economy sector, this Party following investigation carried out under the national legislation, can apply special preventive, antidumping or mitigating measures as regards this import of goods.

Article 4

If one of the Parties attempts to apply special preventive, antidumping or mitigating measures, this Party shall inform other Parties about it and suggest consultations in advance but no later than 30 days prior to the scheduled introduction of measures.

Consultations are suggested in writing enclosed with materials confirming the fact of significant damage or threat of damage to the national economy sector.

Article 5

To establish that confirmation of the fact of significant (financial, serious) damage shall be based on existing information and include objective analyses of the scope of import and its impact on prices of the national domestic market of similar or firsthand competitive goods as well as implications of such import affective manufacturers of the national economy sector of the state-party..

Scope of the import of goods is regarded based on its significant growth in absolute and relative magnitude as regards production and consumption capacities of similar or firsthand competitive goods in the territory of the state-party importer.

Article 6

Establish, that import of goods has an impact on national domestic market prices and is determined through allocating an evidence for existing distinction between the prices of imported goods and of similar or firsthand competitive goods of domestic production or through establishing the fact of other significant impacts of import on these prices that entails or can

entail price decrease, prevents or can prevent increase of above prices, which could be the case if import of goods was lacking.

Article 7

Determine that evidences of the fact that national economy sector is effected by import of goods shall be based on assessment of all credible economic factors that have an impact on the status of economy including, inter alia, current or potential reduction of sales, revenues and production capacity, market share, productivity, cost recovery of capital investments, factors effecting national prices, actual and future impacts on revenues, stocks, employment, wages, growth rate, probable growth of cumulative authorized capital of a company within the national economy sector or increase of their capital investment rate.

Article 8

Determine, that proof of loss or threatened significant damage to the national economy sector of the state-party importer shall be based on exploring facts other than import of goods that have negative impact on status of the sector, including scope and price rates of import performed under adequate conditions, shift of demand and consumption, consequences of modest trade practices and rivalry between foreign and national manufacturers, technological production modifications, export and production indicators of national economy. Significant loss caused by above factors shall not be at the expense of import of goods that can be applied special preventive, antidumping and countervailing measures.

Article 9

Assume that established threatened significant losses as regards national economy sector are based on sheer facts. At that, they include:

Dynamic of import, evidencing for a real chance of follow-up significant growth of import;

Available free production capacities or inevitable obvious growth of exporter's production capacities that stand for a real opportunity to increasing import of goods in the territory of state-party importer based on potential capacities of other target markets;

Such price rate of imported goods that has a significant undermining effect on prices of national manufacturers and can lead to further increase of demand for the imported goods;

Size of stocks of similar or firsthand competitive goods.

Article 10

Assume that none of the factors or facts enlisted in Articles 5-9 of the present Protocol as it is, does not have to be mandatory argument for drawing a conclusion on existing significant loss or threatened significant loss. Conclusion on existing or lacking significant loss or threat of loss is drawn on the ground of aggregate factors or facts explored. In certain cases, when significant loss or a threat of loss is caused by increased import capacities or, in their absence, by the fact that import is exercised based on prices or terms inflicting significant loss to national economy sector, special preventive, antidumping and countervailing measures can be deployed in the event of existing cause and effect between significant loss and threat of significant loss to the national economy sector and increasing import capacities or dumping import of goods, or subsidized import of goods.

Article 11

As regards investigations proceeding implementation of special preventive, antidumping and countervailing measures, each Party agrees to study presentation of another Party and inform Integration Committee on essential fact and conclusions that final opinion will be based on. Prior to making a decision on special preventive, antidumping or countervailing measures the Parties will do their best to ensure constructive resolution of the problem, particularly under bilateral consultations.

Article 12

In the event of crash priority when delays in applying special preventive, antidumping and countervailing measures have inflicted or can inflict irreparable significant loss (**economic, serious**) to the national economy sector that will be difficult to remove thereafter, temporary special, temporary antidumping and temporary countervailing duties can be applied under national legislation prior to exercising consultations provided they are organized instantly.

At that, the Parties shall inform Integration Committee on implementing above measures.

Article 13

Terms of this Protocol, stipulating use of special preventive, antidumping or countervailing measures in mutual trade amongst state-parties to the Customs Union Agreement, shall be applied prior to establishing single customs area of these states.

Article 14

Disputes between the Parties as regards interpretation and application of the provisions of this Protocol shall be resolved through negotiations.

Article 15

If necessary, this Protocol can be amended based on mutual consent.

Article 16

This Protocol enters into force as of the date of last notification received by depository i.e. Integration Committee, on domestic effectiveness procedures, accomplished by the parties. Each of the Parties can withdraw from this Protocol at the end of 6 month period from the date of notifying the depository via diplomatic channels on its intentions to terminate its actions.

Developed in Moscow on 17 February 2000 in a single true sample in Russian. True sample is kept in the Integration Committee that shall forward each Party signatory to this Protocol, its legalized copy.

On behalf of the Government of Belarus
Signature

On behalf of the Government of the
Republic of Kazakhstan
Signature

On behalf of the Government of Kirgiz
Republic
Signature

On behalf
Of Russian Federation
Signature

On behalf of the Government of the
Republic of Tajikistan
Signature