

# Analysis of application of anti-dumping duties in the Russian Federation within the Eurasian Economic Union (EEU)

## Análisis de la aplicación de los derechos antidumping en la Federación de Rusia dentro de la Unión Económica Euroasiática (UEE)

Anna V. AGAPOVA \*

Received: 17/11/2017 • Approved:05/01/2018

### Contents

1. Introduction
  2. General mechanism of the anti-dumping investigation
  3. Initiation of investigation
  4. Conducting of investigation and its basic features
  5. Introduction and application of anti-dumping duty
  6. Analysis of application of anti-dumping duties
  7. Proposals for improving the mechanism of application of anti-dumping duties in the Russian Federation in the framework of EEU
  8. Conclusions
- References  
Notes

#### ABSTRACT:

In the article the analysis of normative and legal acts on the application of anti-dumping duties in Russia within the Eurasian Economic Union (EEU) was carried out, because after joining WTO this regulatory framework has changed. On the basis of an analysis of the existing mechanism of introducing of anti-dumping duties the issue was revealed of not fully formalized legal norms that detail the competence of authorized bodies in the field of anti-dumping regulations, that could result in diminishing the effectiveness of normative and legal regulation. Directions of improving the application of anti-dumping duties in the Russian Federation in the framework of EEU are introduced. This article analyzes the practice of application of anti-dumping duties in force in EEU in relation to other countries, anti-dumping measures taken by third countries in relation to the goods from Russia,

#### RESUMEN:

En el artículo se llevó a cabo el análisis de los actos normativos y jurídicos sobre la aplicación de los derechos antidumping en Rusia dentro de la Unión Económica Euroasiática (UEE), porque después de unirse a la OMC este marco normativo ha cambiado. Sobre la base de un análisis del mecanismo existente de introducción de derechos antidumping, se reveló la cuestión de las normas jurídicas no formalizadas que detallan la competencia de los organismos autorizados en la esfera de las reglamentaciones antidumping, que podrían reducir la eficacia de las normativas y regulación legal. Se introducen las instrucciones para mejorar la aplicación de los derechos antidumping en la Federación de Rusia en el marco de la EEU. Este artículo analiza la práctica de la aplicación de los derechos antidumping en vigor en la UEE en relación con otros países, las medidas antidumping

analysis of anti-dumping measures applied to products of the Member States of the EEU.

**Keywords:** anti-dumping duties , EEU, practice of application of anti-dumping duties

adoptadas por terceros países en relación con los productos de Rusia, el análisis de las medidas antidumping aplicadas a los productos de los Estados miembros. Estados de la UEE

**Palabras clave:** derechos antidumping, UEE, práctica de aplicación de derechos antidumping

## 1. Introduction

It is known that the first regulations on dumping and applying by states of anti-dumping measures appeared at the beginning of the 20th century in North America [6]. Their provisions became the basis of article VI of the General Agreement on tariffs and trade (GATT) [1], which was signed in 1947 as the agreement regulating the trade and political relations of state parties before coming into force of the Charter for the World Trade Organization, which was to be established within the UN. The 23 States that have agreed on mutual tariff concessions, i.e. the reduction of duty rates on the agreed product positions became parties to the GATT.

Later, the legislation concerning the features of application controls, limiting dumped imports, was adopted in 1968, in the European Union, and since then has been repeatedly changed. The need to establish common international trade anti-dumping regulation resulted in concluding an agreement in 1974 during the Uruguay Round on implementation of article VI of the GATT [2], subsequently called the Antidumping code of the GATT-WTO.. It contains the basic (standard) definition of dumping, all cases of deviation from the basic definition, procedure of anti-dumping investigations, as well as the types of anti-dumping measures and the grounds for revision.

In the Russian Federation legislation with its harmonization, regulating the procedure for the application of protective measures in foreign trade has been forming since the year 1993 with the adoption of the law of the Russian Federation "About customs tariff", which at that time secured special kinds of duties (to date, these provisions are invalid). With regard to the harmonization of Russian foreign trade legislation with WTO requirements, later in the year 2003 there was a new law, dedicated to the regulation of protective measures when importing goods, the Federal law of December 8, 2003 N 165-FL "About special protective, antidumping and countervailing measures on the import of goods" [4].

In the new stage of economic integration within the framework of the Eurasian Economic Union internal market protection measures are provided in article 49 of the Treaty on the EEU and Annex No. 8 "Protocol relating to the application of special protective, anti-dumping and countervailing measures in relation to third countries" [3]. In particular the principles of application/non-application of anti-dumping measures were embodied respectively in sections IV and VII of the Annex, the conducting of the investigation-VI section and the provisions on the acceptance and distribution of anti-dumping duties are set forth in the Annex to the Protocol.

## 2. General mechanism of the anti-dumping investigation

The imposition of anti-dumping measures upon import of the goods must be preceded by an investigation by a specially designated body

. The investigation is carried out in order to establish the dumping imports and the resulting material damage industries of Member States (EEU)/sector of the Russian economy (Russia), threats of such damage or significantly slowing down the creation of branches of the economy of the Member States (EEU)/sector of the Russian economy (Russia), based on an written application , or on its own initiative..

Protection of economic interests of Russian producers of goods in connection with the dumping of imports into the territory of the Russian Federation are regulated by the Federal law dated 08.12.2003 N 165-FL [4], which establishes the Federal Executive authority which is responsible for the investigation and appointed by the Government of the Russian Federation. In accordance with the Decree of the Government of the Russian Federation dated 05.06.2008 N 438 [5] such body is the Ministry of industry and trade of the Russian Federation (Ministry of industry and trade), within the framework of which the Department of State regulation of foreign trade activities

specifically deals with these issues.

Ministry of industry and trade by results of conducted investigation develops a draft decision that includes proposals about the rationality of the imposition, implementation, revision or abolition of the anti-dumping measure. The draft decision is attached to the report and submitted to the Government of the Russian Federation. On the basis of this report the Government within 14 days from the date of its registration takes an appropriate decision about the introduction, application, revision or abolition of such measure or about its non-use.

The Ministry is an intermediate link between the Russian producers and participants of foreign trade activities and the Eurasian Economic Commission giving them methodological support [9] providing the necessary documents, evidence and proposals when initiating anti-dumping investigation in order to protect the domestic market of the Eurasian Economic Union and the interests of domestic producers and when the "statement against" such an investigation.

Protection of the interests of the producers of the allied States is regulated in Annex N 8. to EEU Treaty "Protocol on the application of special protective, anti-dumping and countervailing measures in relation to third countries "[3].

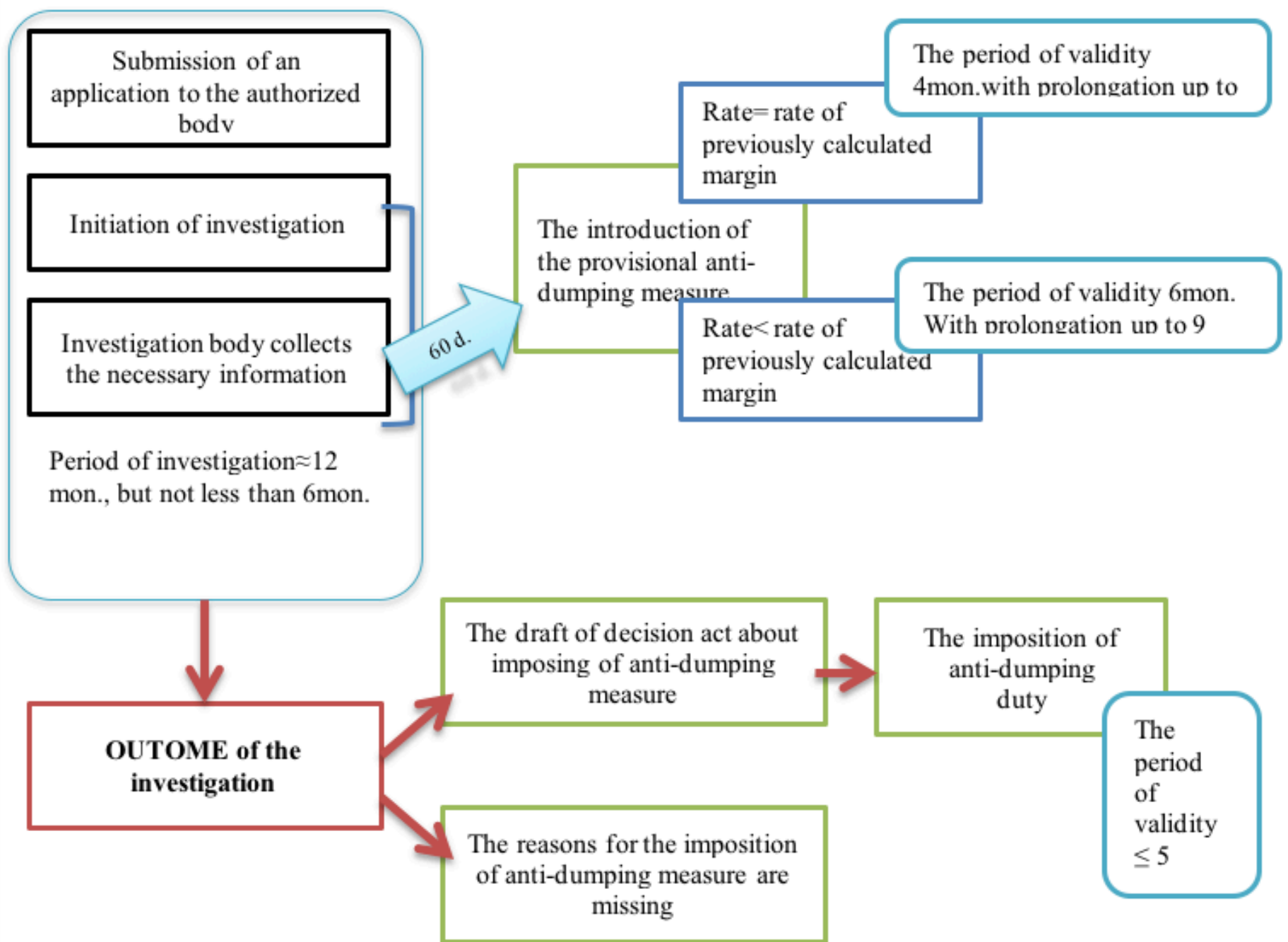
In EEU notified body for investigations is the Department for the protection of the internal market of the Eurasian Economic Commission (DPIM). The decision to impose anti-dumping measures is adopted by the College of Eurasian Economic Commission on the basis of the proposals of the Department for protection of the internal market of the Eurasian Economic Commission.

At the national level and in mutual trade, Member States may not impose anti-dumping duties [7].

The procedure for conducting anti-dumping investigations is harmonized in accordance with WTO rules and is uniform. The procedure of conducting such investigations is presented in the form of the algorithm in Figure 1.

**Figure 1**

The General procedure for the imposition of anti-dumping duty



The general principles and conditions for the conducting of investigations can be formulated as [12]:

- domestic manufacturers, who experience a negative impact of dumped imports, prepare a statement (petition/complaint) with the request to begin anti-dumping investigation including evidence of the conditions for the imposition of anti-dumping measure, and submit it to the authority of the investigation;
- investigation body examines the application and decides whether to initiate an investigation;
- after the initiation of an investigation, the investigative authority collects information on all major elements of the investigation from the concerned persons, who are domestic and foreign product manufacturers, exporters, importers and consumers.

A key element of gathering information is "questionnaires" - document with questions on production, sales, profitability, prices and other information, processing of which gives a detailed understanding of the situation on the market of a product;

- within 60 days from the date of commencement of the investigation authority of investigation may come to a decision on the imposition of the provisional anti-dumping measure, which charged the duty, given that in the case of ignorance of the final duty, the paid duty will be returned to importers.

If the rate of the provisional anti-dumping duty equals to the previously calculated dumping margin, the validity of the provisional anti-dumping duty shall not exceed 4 months, unless this period is extended up to 6 months on the basis of a request from exporters, whose share in the volume of dumped imports of the product, which is the object of investigation is the most.

If the rate of the provisional anti-dumping duty is less than the previously calculated dumping margin, the validity of the provisional anti-dumping duty shall not exceed 6 months, unless this period is extended to 9 months at the request of exporters, whose share in the volume of dumped imports of the product, which is the object of investigation is the most.

The decision on the imposition of the provisional anti-dumping duty shall be taken, as a rule, not later than 7 months from the date of the initiation of an investigation:

-after accepting the prior decision and the imposition of the provisional anti-dumping measure authority of investigation provides (bearing in mind the need to maintain the confidentiality of the information) interested persons the opportunity to become acquainted with the preliminary findings and provide comments;

- within 5-6 months from the beginning of the investigation, the investigative authority conducts public hearings, which constitute a pseudo-hearing involving all interested parties. The parties have the right to give their opinion on all the main issues related to the investigation, and comment on the views of the other party;

-after collecting all the necessary information and evidence, sufficient to decide on the imposition of a definitive anti-dumping measure, the investigation authority provides an opportunity to all interested parties to familiarize themselves with the final results of the investigation.

Such information is considered to be confidential, which can provide an advantage to a third party in the conditions of competition or would entail adverse consequences for the person providing such information, or of the person receiving such information. Confidential information is not disclosed without permission of the party which has granted it, at that such party is obliged to provide its non-confidential part (version), which will reflect the basic gist of information without violating its privacy.

If a party does not provide a non-confidential version or requests confidential status for information which is not confidential, investigative authority may not take into account such information.

Let`s get back and consider each step of the investigation in detail. The task is to define the range of stakeholders and find out the main tasks set before the notified body during the investigation.

The task of the authorized organ in the course of the investigation is to collect objective information about the state of the item manufacturers in EEU, factors affecting their economic and financial indicators, as well as actual indicators and conditions of similar import (directly competing goods) in the territory of the Union in order to prepare a conclusion on the existence or absence of grounds for the application of anti-dumping measure.

In the course of investigations authorized body is entitled to request necessary information to conduct investigation from stakeholders and public authorities (management) of EEU Member States. Authorized body has the right to verify the information provided to it, including directly at the place where the person is located on the territory of EEU Member States or on the territory of a foreign country.

The stakeholders at conducting the investigation are:

- manufacturers of the reporting item or association of producers in the territory of a foreign State;
- exporters of the reporting item on the territory of a foreign State;
- manufacturers of the reporting item or association of producers in the EEU;
- importers of the reporting item into the territory of the Union;
- the authorized body of the exporting foreign state, on which the investigation is initiated;
- consumers of the item in the Union using the considering item when producing the goods;
- associations of consumers, if the considering item is the subject of consumption mostly by individuals.

---

### **3. Initiation of investigation**

To initiate the investigation, the statement may be submitted by the manufacturer of the item in

EEU or by any group of producers or association of producers, if the number of such associations is composed of a substantial portion of the manufacturers, but not less than 25% of the total production of the product under consideration in the Union.

In addition, the application must be accompanied by evidence supporting the application by other manufacturers (letters, in which they express their consent to the proposed introduction of special protective, antidumping or compensatory measures). At that, the following conditions must be met:

- the application must be supported by producers of the product under consideration, (collectively with the applicant) producing not less than 25% of the volume of production of the product under consideration in the Union;
- the volume of production of the product considered by the applicant and the producers supporting the application must constitute more than 50% of the volume of production of similar product manufacturers raised their opinion (support or disagreement) concerning the application.

If the production volume of applicants is more than 50% of the item under consideration within the EEU, these terms and conditions are considered to be implemented automatically and the evidence support statement is not required. The date of submitting is the date of its registration in the Department for the protection of the internal market.

The application must cover:

- general information (information about the applicants, known importers, exporters, consumers, foreign producers of item);
- product description, comparison of imported product and the similar product (directly competing product) produced in the EEU;
- evidence of availability of dumped imports;
- evidence of damage or threat of damage to industries of the Union;
- evidence of the causal link between dumped import and damage to industries of the Union;
- proposals about the introduction of measure.

Based on the results of consideration of the application the authorized body can take the following actions:

- to initiate an appropriate investigation (written notification is sent to the applicant and published on the official website of EEC in the Internet);
- to reject the application in case of not giving information in the application demanded by the Protocol or in case of non-authenticity of the information provided in the application, or in case of not introducing of non-confidential version of the application (the decision is sent to the applicant in writing with justification of the reasons for deviations). Deviation of application on other grounds is not allowed;
- to refuse to carry out an investigation if using the results of the analysis of the information provided in the application, the authorized agency concluded that there was no reason under the Protocol for investigation (decision is sent to the applicant in writing with justification of reasons for refusal).

The application may be withdrawn before the start of the investigation, in this case it is deemed not to have been applied. In case of withdrawal of application in the course of the investigation, the investigation is terminated without the imposition of anti-dumping measure, and information contained in the application is not a subject to public disclosure. Annex 1 visually presents introducing of the application to the competent authority of conducting the investigation.

---

## **4. Conducting of investigation and its basic features**

If sufficient documents and evidence for the conducting of anti-dumping investigation is introduced, the investigation may be initiated.

After the adoption of the decision on the beginning of the anti-dumping investigation, the Department, as mentioned earlier, in order to prepare the necessary information, sends to the



known exporters and/or producers of the item being dumped or items similar to it, the list of questions (the "questionnaire"), to which they must answer (fill in "answers").

Consideration of the case should be consistent with the principle of adversarial process, any party should have equal opportunities to provide information. So, consumers using the item in production of goods, which is the subject of the investigation, representatives of public associations of consumers, public authorities (management), local governments, and other persons have the right to submit to the authority conducting the investigation, information that is relevant to the investigation.

In addition, the authority conducting the investigation has the right to request from the person concerned additional information in order to investigate. The response to the request, similar to date of providing answers to a list of questions to gather information, must be provided no later than 30 calendar days from the date of receiving of the request, namely since its transfer to the authorized representative of the person concerned or after 7 calendar days from the date of sending request by mail.

In the course of the investigation, the Department provides the participants with an opportunity to familiarize themselves with the other investigation information and notices related to the investigation and used by it during the investigation, but not containing confidential information.

Sending of notification depends on whether the person concerned is a registered member of investigation. In any case, all known interested persons to the competent authority get a written notice of initiation of an investigation, of the extension of the investigation and of the completion of the investigation. In addition, information about the decisions taken and activities planned within the framework of investigations is hosted on the official EEC Internet website. Also, at the request of stakeholders, EEC DPIM can consult on the subject of the investigation.

The period of the investigation, during which information is examined in order to determine the presence of the dumped imports, is established by the investigating authority. At that this period set equals to the 12 months preceding the date of handing in the application for investigation, for which statistics are available, but in any case, this period should not be less than 6 months.

The date of completion of the investigation is the date of the Commission's consideration of the report on the results of the investigation and of the draft act of the Commission.

In case of the imposition of the provisional anti-dumping duty investigation must be completed before expiration of the relevant provisional duty [3].

The main feature of the anti-dumping investigation, is considered that if the Department of protection of the internal market, states that the size of the margin of dumping will not exceed 2% or the volume of dumped imports and their impact is negligible, that is, import of item- subject to dumping into the customs territory of the Union in its volume will not exceed 3%, provided that the import of such goods accounts for no more than 7% to the exporting third parties, and their individual share in total volume of import of item being dumped also is less than 3%, then there is the possibility of ending this anti-dumping investigation without the imposition of anti-dumping measure.

Based on the results of the investigation, before the adoption of the final decision the Department formulates its key findings, informing the interested individuals and giving them the opportunity to submit comments within a period not exceeding 15 calendar days.

---

## **5. Introduction and application of anti-dumping duty**

A consequence of the conducted investigation, if approved by EEC price undertakings were not accepted by exporters who dump, is the introduction of anti-dumping duty. Its size must not exceed the size of the calculated dumping margin and be sufficient to eliminate damage to industry of Member States. The Commission, on the basis of individually calculated dumping margin sets the size of the anti-dumping duty rates in respect of each item supplied by the exporter or producer which is the subject of dumping. In regard to the item being dumped, from third countries for which no individual dumping margin was calculated, EEC sets a single anti-dumping duty rate for such item based on the highest margin of dumping calculated during the investigation.

Anti-dumping duty may be applied in respect of goods placed under customs procedures, the condition of the placing under which is the payment of anti-dumping duties, not earlier than 90 days prior to the date of imposition of provisional anti-dumping duty if according to the results of investigation DPIMEEC in respect of this product at the same time the following has been determined:

- 1) dumped imports had taken place earlier that did harm, or the importer knew or should have known, that the exporter delivers the item at a price below its normal value, and that such imports could harm industries of Member States;
- 2) damage to industries of Member States was caused greatly by increased dumped imports within a relatively short period of time on account of the duration and volume, as well as other circumstances (including rapid growth of stocks of imported goods) can significantly reduce the recovery effect of the imposition of anti-dumping duty provided that importers of this product were given the opportunity to provide comments until the end of the investigation.

Anti-dumping duty cannot be applied in respect of goods placed under customs procedures, the condition of the placing under which is the payment of anti-dumping duties, before the date of publication of a notice containing a warning of the possible application of anti-dumping duty.

The amount of anti-dumping duties should be applied in national currency on the single account of the authorized body of the Member State of the Eurasian Economic Union, including the recovery of such duties. The amount of anti-dumping duties cannot be count off on account of payment of other fees except counting off a pay off a debt of payers on payment of customs payments, and penalties (percent). Provisional anti-dumping duty is paid (collected) in national currency on the account, specified by legislation of a Member State, by the Customs authorities of which the provisional anti-dumping duty is charged.

According to the contract [3] a repeated investigation can be initiated in connection with the expiry of anti-dumping measure carried out on the basis of a declaration by the person concerned in writing, which should be submitted not later than 6 months prior to the expiry of the anti-dumping measure. Prior to the completion of the reinvestigation, the application of anti-dumping measure is extended by a decision of the Commission. On the application of the person concerned, if after the imposition of anti-dumping measure not less than 1 year has passed, or on the initiative of the authority conducting the investigation a repeated investigation may be carried out to determine whether continuing the application of anti-dumping measure and (or) its revision (including the review of individual anti-dumping duty rate) due to changed circumstances is expedient.

Repeated investigation may also be carried out in order to establish an individual dumping margin for the exporter or producer who did not deliver the item which was the subject of dumped imports during the period of investigation. The term of carrying out such investigations should be completed within 12 months from the date of their beginning. But repeated investigation to establish anti-dumping measure should be completed within 9 months from the date of its commencement (under the bypass of anti-dumping measure is considered a changing in delivering of the item for evasion of anti-dumping duty or from the implementation of the price obligations by the exporter).

Also, Agreement on EEU [3] provides the order for appeals in the Court of Union of decisions, actions, inaction by the Commission relating to the application of anti-dumping duties.

What should be done if a Russian producer or exporter receives information about the initiation of an investigation in relation to his/her product? Similar to the order of actions from third countries in respect of goods being dumped where EEC initiates the investigation. Briefly, they can be formulated as follows:

1. To assess the prospects of a positive outcome of the investigation in the case of Russian participation of the interested party and the cost involved.
2. To take a decision on the participation in the investigation.
3. To contact with the investigating authority to register as an interested party.
4. To get the "questionnaire" to fill.



5. To gather information for the questionnaire, fill in the "answers"
6. To send a "answers" to an authorized body in a set period of time.
7. To prepare arguments and evidence.
8. If necessary, request consultations.

It should be remembered that participating in the investigations preceding the introduction of measures to protect the market gives a great advantage to the party concerned -the right to protect their own interests, the opportunity to express its position at the different stages of the investigation, and the most important- to be heard. Refusing to participate in the procedure, the companies deny themselves the right of defense.

With the full cooperation of the company with the competent authority of the country, making investigation and providing it with reliable information, the outcome of the procedure will reflect the real situation on the market as all calculations will be based on data provided by the company.

In the case of non-participation of the producer and the lack of information on the part of the Russian producers, the authorized body of the foreign state, investigating, will be forced to build calculations on the basis of available information. It should be noted that the use of such information in most cases leads to calculating of unnecessarily high measures. It should be borne in mind that, in the case of non-participation of companies and the introduction of the measure, the country's market may be closed for deliveries of item for at least 5 years. Moreover, the lack of cooperation could lead to the imposition of unreasonably high measure than in the case of participation of interested companies.

Summing up all the above, it can be concluded that the anti-dumping duty can be introduced only on the results of the anti-dumping investigation, by specifically authorized body. In Russia the Department of State regulation of foreign trade activities of the Ministry of industry and trade of the Russian Federation has such power, and at the level of EEU such a competent body is the Department for protection of the internal market of the Eurasian Economic Commission (DPIM EEC). The Union also provides a course of appeal of actions or omissions of the EEC in the courts.

In the process of investigation provisional anti-dumping duty can be applied , validity period of which must not be more than 6 months; the maximum period of investigation should not exceed 18 months; validity period of the anti-dumping duty-not more than 5 years.

At the national level and in mutual trade, Member States may not use anti-dumping duties.

Conducting of investigations is the same and unified in accordance with WTO rules. The participation of a respondent in the investigation plays an important role, as a result of participation in the procedure can be both positive (lower size of measure, and possibly its not entry), and negative-high size of measure in case of aggressive practice of dumping, which is prohibitive for further cooperation.

---

## **6. Analysis of application of anti-dumping duties**

Based on the results of the reports placed by the Eurasian Economic Commission [10], summary statistics in the second half of the year 2015 revealed 138 measures adversely affecting or potentially affecting access for goods from Member States to third country markets (EEU).

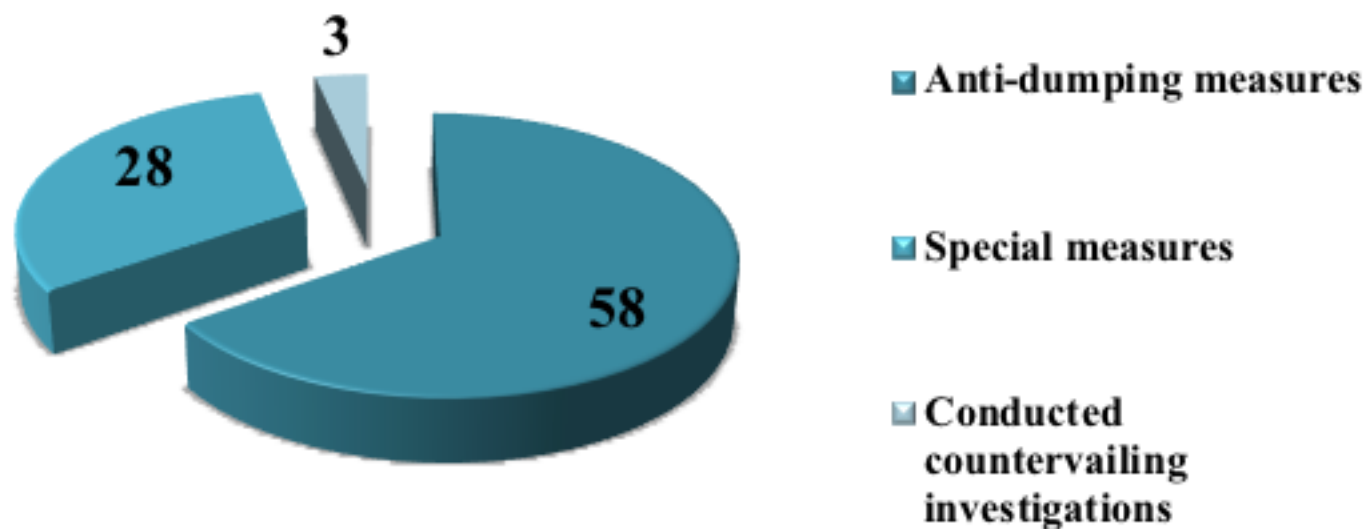
As can be seen from Figure 2, a total of 89 restrictions, accounting for 64% of all measures of protection of the external market is revealed, from which 58 measures represent the anti-dumping measures and investigations (28-special protective measures and investigation and 3-conducted countervailing investigations (it has been observed that on the EEU territory countervailing measures practically are not applied, so as to prove the use of subsidies in the production of the imported goods is almost impossible)).

In the second half of the year 2015 structural changes in the quantity of applied anti-dumping measures were observed – deadlines of some expired and new ones were initiated. Finally, it should be noted that the largest number of anti-dumping measures is applied by third countries in respect of products originating from the Russian Federation-48 measures.

**Figure 2**

Market protection measures applied by third countries in respect of the Member States of the EEU.

## Market protection measures applied by third countries in relation to Member States of the EAEU

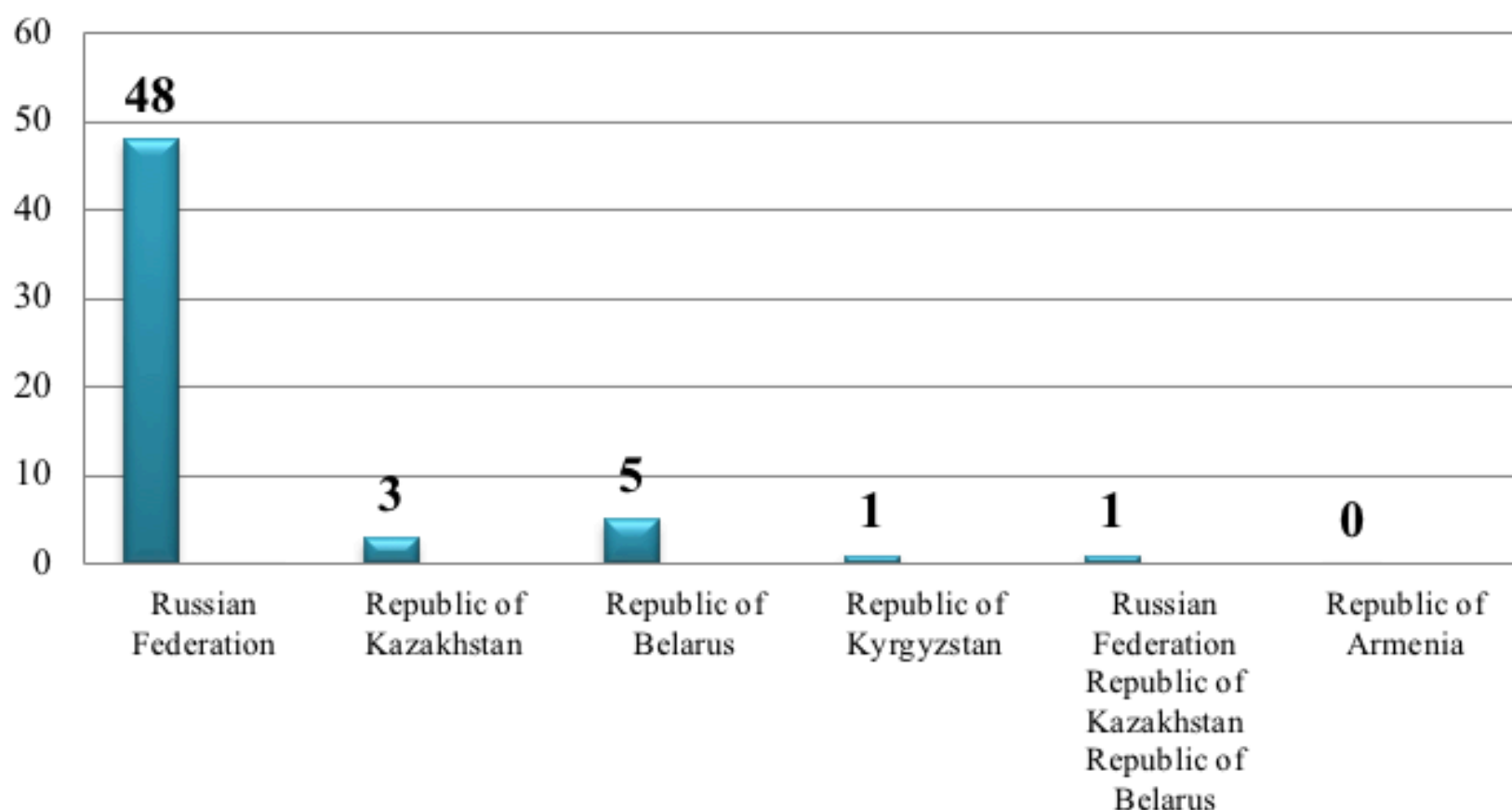


As can be seen from Figure 3, 3 measures are applied with respect to goods from the Republic of Kazakhstan, 5- in respect of Belarusian goods, 1-in respect to goods from the Republic of Kyrgyzstan and 1 measure is applied to hot-rolled flat steel products from the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation. Application of anti-dumping measures to products originating from the Republic of Armenia, was not revealed.

**Figure 3**

The total number of anti-dumping measures applied to products of the Member States of the EEU

### The total number of anti-dumping measures applied to goods of Member States of the EAEU

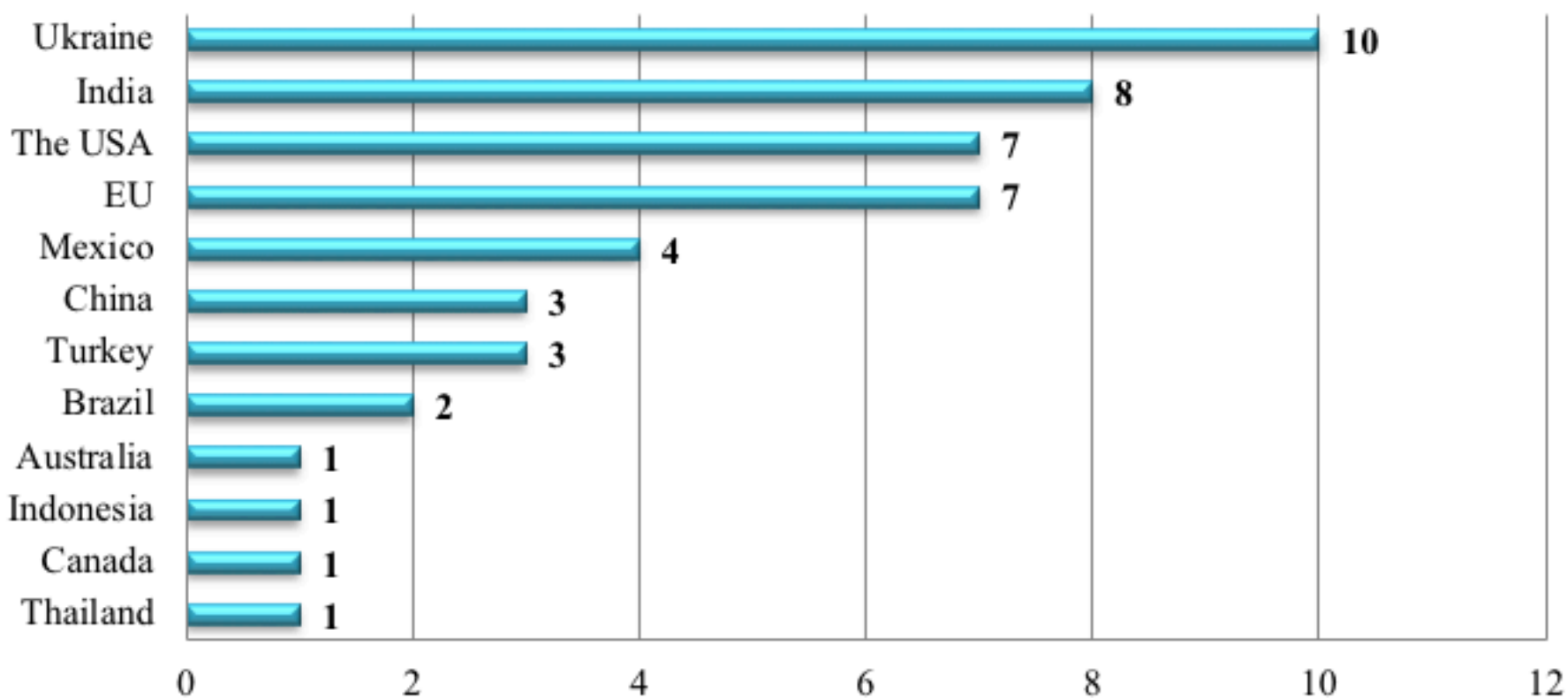


Analysis of application of anti-dumping duties applied by third countries to goods from the Russian Federation (Figure 4), showed that the largest number of anti-dumping measures is applied in relation to the Russian Federation from Ukraine (10), India (8), United States and the EU [7]

**Figure 4**

The number of anti-dumping measures applied by third countries for goods from Russia

### The quantity of anti-dumping measures applied by third countries to the goods from Russia



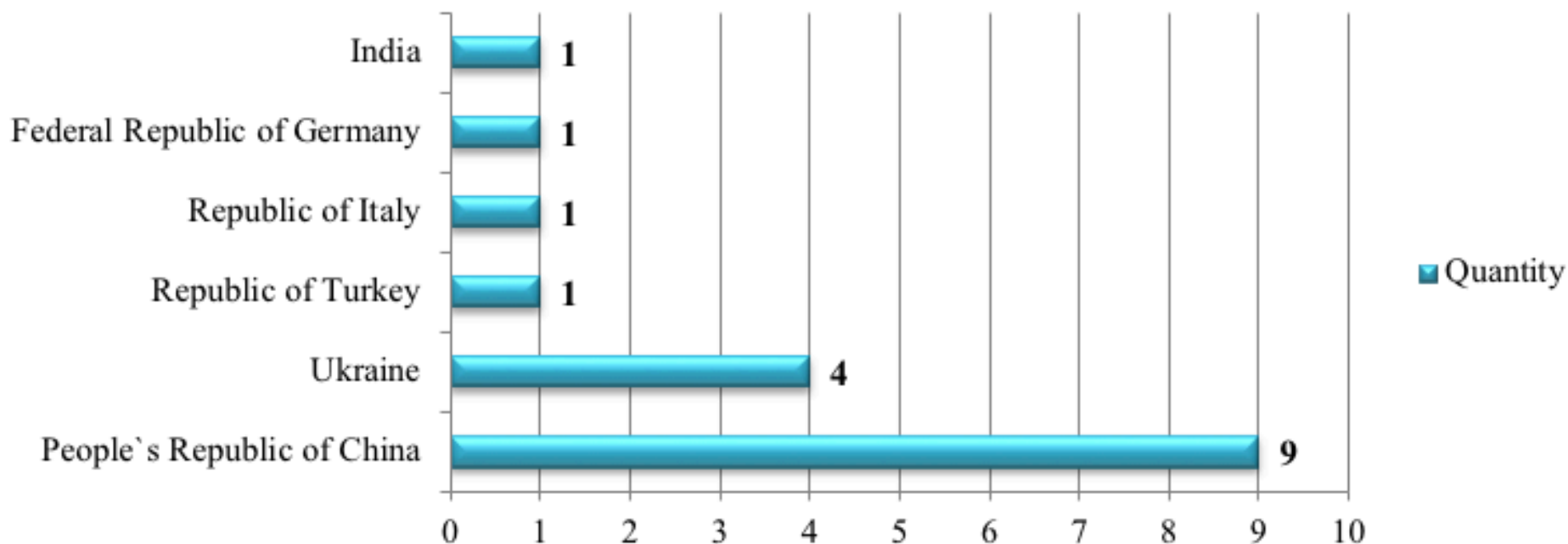
At the current moment in the Eurasian Economic Union anti-dumping measures are applied to 15 products - items for dumping from different countries [11].

As a result of the analysis of the practice of antidumping duties in EEU (Figure 5) it was found that the largest number of anti-dumping measures, within the framework of which the related duties are imposed, are applied to China-9 measures on 9 products, Ukraine-4 measures, one anti-dumping duty is imposed on Indian graphite electrodes, and one with regard to light commercial vehicles from Germany, Italy and Turkey. In total respect to products from all countries only special protective measures are applied.

**Figure 5**

Anti-dumping measures in force in the EEU in relation to third countries

### Anti-dumping measures in force in the EAEU in relation to third countries



Thus, analyzing the statistics of application of anti-dumping duties in relation to the goods

originating from EEU, it can be concluded that during the last year, the qualitative improvement of conditions for the access of goods from the five countries to the markets of third countries has not occurred, and most of the anti-dumping duties is applied by third countries in respect of products originating from the Russian Federation. The Russian Federation itself, along with other member states of the Union charges antidumping duties from 15 products imported from third countries. At current moment the largest number of anti-dumping measures is applied to China.

---

## **7. Proposals for improving the mechanism of application of anti-dumping duties in the Russian Federation in the framework of EEU**

Finally it should be said about the existing problem in legislative consolidation of status of the anti-dumping investigation and the body conducting it. Since March 7, 2012 year special protective, anti-dumping and countervailing investigations on a unified customs territory of the Customs Union, have been carried out by the Department for the protection of the internal market of the Eurasian Economic Commission, most investigative authority was shifted under the patronage of the Department.

As mentioned earlier, in relation to the Russian exporters, the Ministry of industry and commerce carries out methodological feature [9] and the function of "bundle" with EEC. That is, it monitors on a constant basis investigations that foreign states carry out in respect to the import of goods of Russian origin, as well as it monitors the introduction of measures based on the results of such investigations. The purpose of such monitoring is to ensure compliance of bilateral agreements and international rules and regulations in the procedures preceding the introduction of market protection measures. In this case, the capacity of the Ministry is limited to competence in collecting applications and information from Russian stakeholders and the initial calculation of the dumping margin with the following introduction of all information to the EEC.

But if such a course of action remains to this day, and was docked during a transitional period only within the framework of EEU with the "Agreement on the procedure for the application of special protective, anti-dumping and countervailing measures during the transitional period", then now this agreement is invalid and current normative document regulating (within the Russian Federation) sequence in subordination of bodies at the national and international levels does not exist.

Such conceptual inconsistencies between supranational and national levels of legislative regulation, will undoubtedly spawn different kinds of conflicts, collision of norms, complicate the application of normative legal acts and, ultimately, reduce the effectiveness of the legal regulation of trade policy [8].

To solve this problem, the member states of the Union should clearly formulate the procedural course of actions of authorized bodies at the national level and to develop an appropriate regulatory legal act that would distinguish the functions and competences of these bodies with a view of the effective implementing of the anti-dumping regulation.

So, today it is necessary for Russia to prepare and adopt a special regulatory act, which would clearly reflect the competences of the Ministry of industry and commerce in accordance with the Decree of the Government of the Russian Federation dated 05.06.2008 N 438 and pass under the auspices of the Ministry those functions which were previously fulfilled and are continued to be fulfilled by the Ministry of economy and development. The functions are keeping statistics for the number of initiated measures and implementing of functions in the field of organizational-technical maintenance of activity of non-tariff regulation.

Thus, such a measure would avoid legal discrepancies in the application of anti-dumping duties and provide an opportunity to systematically delineate the subordination and responsibility of the authorized bodies, in the case of complaints and even initiation of judicial proceedings.

---

## **8. Conclusions**

On the basis of the work carried out, it can be concluded that the anti-dumping duty is non-tariff

measure of protection of domestic market from sales of goods at dumping prices. It is charged regardless of the payment of import customs duties, and its main difference from them is definitely aimed and protectionist character. The application of such a measure is governed by Federal Law No. 165-FL "On special protective, antidumping and countervailing measures when importing goods" and Agreement on EEU.

Anti-dumping duty can be introduced only on the basis of the anti-dumping investigation by a specifically authorized body. In Russia the Department of State regulation of foreign trade activities of the Ministry of industry and trade of the Russian Federation possesses such an authority, and at the level of the EEU the competent body is the Department for protection of the internal market of the Eurasian Economic Commission (DPIM).

In the process of investigation the provisional anti-dumping duty can be applied, which must not be more than 6 months; period of investigation is 12 months; validity period of the anti-dumping duty-not more than 5 years.

At the national level and in mutual trade, Member States may not use anti-dumping duties [7].

Conducting of investigations is united and unified in accordance with WTO rules. An important role is played by the participation of a respondent in the investigation, as a result of participation in the procedure can be both positive (lower size of measure, and possibly its not entry), and negative-high size of measure in case of aggressive practice of dumping, which is prohibitive for further cooperation.

Analyzing the statistics of application of anti-dumping duties in relation to the goods originating from EEU, it can be concluded that during the last year, the qualitative improvement of conditions for the access of goods from the five countries to the markets of third countries has not occurred, and most of the anti-dumping duties are applied by third countries in respect of products originating from the Russian Federation. The Russian Federation itself, along with other Member states of the Union charges antidumping duties from 15 products imported from third countries. On the current situation, the largest number of anti-dumping measures is applied to China.

To solve existing problem in legislative consolidation of the status of the anti-dumping investigation and the authority its conducting, the Member states of the Union should clearly articulate the procedural course of action of authorized bodies at the national level and to develop an appropriate regulatory legal act at supranational level, that would distinguish the functions and competences of these bodies with a view to the effective implementation of the anti-dumping regulation.

---

## References

1. The General Agreement on tariffs and trade (GATT 1947) (1947).
2. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, done April 12 (1979) (Antidumping Code). 31 UST 4919, 26 Supp. BISD 171. (Agreement on implementation of Article VI of the General Agreement on tariffs and trade. (from April 12, 1979) (Antidumping Code).
3. Eurasian Economic Union Treaty (signed in Astana 29.05.2014) (ed. on 08.05.2015) Annex 8-Protocol;
4. Eurasian Economic Union. FAQ. Facts and figures (2014), *M*.
5. FL dated from 08.12.2003 No. 165-FL "On special protective, antidumping and countervailing measures when importing goods» (2003) *Assembly of legislation of RF*, 50.
6. Russian Federation Government resolution dated from 05.06.2008 N 438 "On the Ministry of industry and trade of the Russian Federation". (ed. by 18.03.2016)
7. Background information on restrictive measures. Anti-dumping procedures. <http://new.ved.gov.ru/Article/Details/22875>
8. Besedeš, T., Prusa, T.J. The Hazardous Effects Of Antidumping. *Economic Inquiry* (2017) 5 (1): 9–30
9. Blonigen, B.A., Haynes, S.E. The Hazardous Effects Of Antidumping (2002) *American Economic Review*, 92 (4): 1044-1061
10. Denisova, A.Yu. Legal basis of the application of anti-dumping duties in the Customs Union



- within EEU, features of their application during the transition period (2013) *Customs business*, 2.
11. Hartigan, J.C. Dumping and signaling. *Journal of Economic Behavior and Organization* (1994) 23 (1): 69-81.
  12. Kinnucan, H.W., Duc Minh, N., Zhang, D. Trade diversion and antidumping effectiveness: insights from a residual demand model. *Australian Journal of Agricultural and Resource Economics* (2017) 61 (2): 324-340
  13. Konings, J., Vandenbussche, H. 2005. Antidumping protection and markups of domestic firms. *Journal of International Economics*, 65 (1): 151-165.
  14. Kozyrin, A.N. , Yalbulganov, A.A. Anti-dumping Procedures in the EurAsEC Customs. *Union Liverpool Law Rev* (2015) 36: 183.
  15. Kozyrin, A.N. , Yalbulganov, A.A. Anti-dumping procedures. *Environmental Policy and Law* (2014) 44: 456-461
  16. Measures of protection of the internal market operating in the EEU [ WWW page] URL <http://www.eurasiancommission.org/ru/act/trade/podm/Investigations/Measures.aspx>
  17. Moore, M.O., Zanardi, M. Trade Liberalization and Antidumping: Is There a Substitution Effect? *Review of Development Economics* (2011) 15 (4): 601–619
  18. Presley, L. Warner. Canada - United States Free Trade: the Case for Replacing Antidumping regulation with Antitrust // *Law & Policy in International Business*. №.23, 1992. P.791-891.
  19. Prusa, T.J. On the spread and impact of anti-dumping. *Canadian Journal of Economics* (2001) 34(3):591-611
  20. Prusa, T.J. Why are so many antidumping petitions withdrawn? 1992. *Journal of International Economics*. (1992) 33 (1-2): 1-20
  21. Report on the restrictive measures applied to products of the Member States of the EEU in the markets of third countries in the second half of the year 2015 [ WWW page] URL [http://www.eurasiancommission.org/ru/act/trade/dotp/SiteAssets/dostup/Доклад%20об%20ограничительных%20мерах\\_1%20пр%202015.pdf](http://www.eurasiancommission.org/ru/act/trade/dotp/SiteAssets/dostup/Доклад%20об%20ограничительных%20мерах_1%20пр%202015.pdf)
  22. Russian producers of bulldozers will be protected against unfair competition [WWW page] URL [http://minpromtorg.gov.ru/press-centre/news/#!rossiyskih\\_proizvoditeley\\_buldozerov\\_zashhityat\\_ot\\_nedobrosovestnoy\\_konkurencii](http://minpromtorg.gov.ru/press-centre/news/#!rossiyskih_proizvoditeley_buldozerov_zashhityat_ot_nedobrosovestnoy_konkurencii)
  23. Sun, J.Y., Lee, S. Anti-dumping Duty and Firm Heterogeneity: Evidence from Korea *World Economy* (2017) 40 (9): 2007–2030
  24. Yalbulganov, A.A., Troshkina, T.N. 2013. Duties in the mechanism of the state regulation of foreign trade activity (in Russian). *Finansovoye pravo (Financial Law)* 9: 19–23.

---

\*. ITMO University, Russia, e-mail: [av\\_agapova@rambler.ru](mailto:av_agapova@rambler.ru)

## Notes

1. The General Agreement on tariffs and trade (GATT 1947) (1947).
2. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, done April 12 (1979) (Antidumping Code). 31 UST 4919, 26 Supp. BISD 171. (Agreement on implementation of Article VI of the General Agreement on tariffs and trade. (from April 12, 1979) (Antidumping Code).
3. Eurasian Economic Union Treaty (signed in Astana 29.05.2014) (ed. on 08.05.2015) Annex 8-Protocol;
4. .FL dated from 08.12.2003 No. 165-FL "On special protective, antidumping and countervailing measures when importing goods» (2003) *Assembly of legislation of RF*, 50.
5. Russian Federation Government resolution dated from 05.06.2008 N 438 "On the Ministry of industry and trade of the Russian Federation". (ed. by 18.03.2016)
6. Presley, L. Warner. Canada - United States Free Trade: the Case for Replacing Antidumping regulation with Antitrust // *Law & Policy in International Business*. №.23, 1992. P.791-891.
7. Eurasian Economic Union. FAQ. Facts and figures (2014),M.
8. Denisova, A.Yu. Legal basis of the application of anti-dumping duties in the Customs Union within EEU, features of their application during the transition period (2013) *Customs business*, 2.

9. Russian producers of bulldozers will be protected against unfair competition.  
[http://minpromtorg.gov.ru/press-centre/news/#!rossiyskih\\_proizvoditeley\\_buldozerov\\_zashhityat\\_ot\\_nedobrosovestnoy\\_konkurencii](http://minpromtorg.gov.ru/press-centre/news/#!rossiyskih_proizvoditeley_buldozerov_zashhityat_ot_nedobrosovestnoy_konkurencii)
10. Report on the restrictive measures applied to products of the Member States of the EEU in the markets of third countries in the second half of the year 2015.  
[http://www.eurasiancommission.org/ru/act/trade/dotp/SiteAssets/dostup/Доклад%20об%20ограничительных%20мерах\\_1%20пг%202015.pdf](http://www.eurasiancommission.org/ru/act/trade/dotp/SiteAssets/dostup/Доклад%20об%20ограничительных%20мерах_1%20пг%202015.pdf)
11. Measures of protection of the internal market operating in the EEU.  
<http://www.eurasiancommission.org/ru/act/trade/podm/Investigations/Measures.aspx>
12. Background information on restrictive measures. Anti-dumping procedures.  
<http://new.ved.gov.ru/Article/Details/22875>

---

Revista ESPACIOS. ISSN 0798 1015  
Vol. 39 (Number 12) Year 2018

[Índice]

[In case you find any errors on this site, please send e-mail to [webmaster](mailto:webmaster)]

©2018. revistaESPACIOS.com • ®Rights Reserved