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Analysis of the problems of the procedure for issuing an Industrial Certificate in the Republic of Kazakhstan and ways to solve them

Annotation

Main problem: It is very important for each company to obtain an industrial certificate, which makes it possible to get into the Register of Domestic Manufacturers, as they expect to receive large orders. With the receipt of an industrial certificate, their prospects for participation in various tenders and purchases will significantly increase, where they can show their abilities, compete with domestic producers, and also have an advantage over importers. Since July 1, 2019, the industrial certificate has become mandatory for participation in public procurement. Corresponding changes to the rules for public procurement were made by the Ministry of Finance of the Republic of Kazakhstan. Taking into account the experience of the «Rules for determining the country of origin of goods, issuing a certificate of origin of goods and canceling its validity», approved by Order of the Acting Minister for Investment and Development of the Republic of Kazakhstan dated February 24, 2015. No. 155», it becomes clear that the document does not take into account a number of «narrow» specifics of individual industries.

Purpose: development of amendments and additions to the «Rules for the formation and maintenance of the register of domestic producers of goods, works and services, as well as the issuance of an Industrial Certificate» for the subsequent possibility of obtaining an Industrial Certificate by a chemical industry enterprise for the production of mineral fertilizers.

Methods: study and analysis of literary sources, statistics and modeling of the procedure for issuing an Industrial Certificate.

Results and their significance: the problems of application were studied, ways to solve these problems were found, and amendments and additions to the “Rules for the formation and maintenance of the register of domestic producers of goods, works and services, as well as the issuance of an industrial certificate” were developed. At the moment, the Rules need to be carefully finalized. It is necessary to consider this issue together with authorized state bodies, associations and business representatives, since obtaining an Industrial Certificate will directly affect participation in public procurement, and, accordingly, the economy of the Republic of Kazakhstan.

Key words: industrial certificate, public procurement, technical regulation.

Introduction

A complex of transformations in the system of standardization, certification and quality management has been carried out since the first years of independence of the Republic of Kazakhstan. These transformations have been observed over the years, striking examples of which are: the application of the European model of technical regulation to the current realities of the economic situation in the Republic of Kazakhstan, accession to the Eurasian Economic Union, the adoption of unified technical regulations of the Eurasian Economic Union, the introduction of new regulations and legal acts that determine the share of local content in products and services, as well as the potential of domestic industries. The results of these transformations proved that the system of technical regulation of the Republic of Kazakhstan is an effective tool for economic development. The development of new Kazakhstani legal acts and regulations introduced to support the domestic producer of goods and services will contribute to the transformation of the old system and the creation of a new one that is fundamentally different from the previous one.

This study is devoted to problematic issues in the field of industrial certification, namely:

- shortage of qualified personnel;
- unregulated pricing system for works carried out in this area;
- the complexity of the industrial certification procedure; lack of process automation of the industrial certification mechanism.

Materials and methods

Comparative method (in particular comparative legal), method of deduction, modeling.

Results

The purpose of introducing the Industrial Certificate is to stimulate the development of domestic production; implementation of the import substitution program; use in procurement.

An industrial certificate is a voluntary certification confirming that the applicant has the technical, technological and resource capabilities to produce products, perform work, and provide services in volumes according to the declared list of goods, works, services.

The industrial certificate contains an appendix indicating the commodity items according to the codes of the Unified Nomenclature Reference Book of Goods, Works, Services and the Commodity Nomenclature of Foreign Economic Activity; production capacity for each type of product; the proportion of local content used exclusively for statistical data.

The industrial certificate in the Republic of Kazakhstan provides for a three-level mechanism. At each level, it is planned to increase the list of requirements for potential entrepreneurs, which are designed to stimulate the development of Kazakhstani production, the export orientation of Kazakhstani entrepreneurs.

Industrial certificate 1 is a confirmation of the production potential required for the production of goods, the performance of work, the provision of services.

Industrial certificate 2 is in addition to the requirements for issuing certificate 1, an additional confirmation of technological potential is required.

Industrial certificate 3 is in addition to the requirements for issuing certificates of the first and second levels, it is additionally necessary to confirm the innovative and technological potential.

The effect of Industrial certificates of the first, second and third levels will be simultaneous, without attachment to each other. The period of validity of the Industrial Certificate 1, 2, 3 levels 1, 3, 5 years, respectively, from the date of its issue.

Obtaining an Industrial Certificate is carried out on a voluntary basis [1].

Law of the Republic of Kazakhstan «On technical regulation» No. 396-VI dated December 30, 2020 interprets technical regulation as relationships based on legal regulations in the field of defining, using and implementing strict requirements for products or processes related to them [2].

The Law of the Republic of Kazakhstan «On Technical Regulation», which has become the main tool for transforming the system of certification, standardization and quality management, is difficult to implement. The reason for this is the low level of law enforcement practice by false producers who abuse the «gaps» in the legislation, including violating public procurement procedures with impunity, thereby damaging the country's gross domestic product. At this stage of development of a market economy, which is in its infancy, this has a negative impact on the system of technical regulation of our Republic.

It should be noted that one of the main requirements for participation in public procurement is that the candidate has a document confirming the quality of the goods, work or service produced by candidate.

In a market economy, certification is the main instrument that guarantees the compliance of products with the requirements of regulatory documentation. Certification is a procedure carried out by a conformity assessment body, the essence of which is a written proof of the quality of products or services to the requirements established by regulatory documentation.

An analysis of the scientific works of authors from the field of technical regulation showed that at the initial stage of the formation of a conformity assessment system, a certificate appears as a commodity for consumption. The certificate is endowed with a wider range of influence, and is a tool for long-term planning that can influence the economic development of the enterprise and, accordingly, the career achievements of employees in it [3].

In addition to mandatory certification confirming the quality of goods, works and services, industrial certification has also been introduced for public procurement since July 1, 2019.

Industrial certification is a voluntary certification that applies to both residents and non-residents of the Republic of Kazakhstan and confirms that the applicant has technological, technical and resource capabilities for manufacturing products, performing work and providing services in the volumes specified in the list of goods, works and services. This document confirms the presence of the applicant in the Register of Domestic Manufacturers.

There are two procedures before obtaining an industrial certificate:

1. Requisition and verification of title documents.

2. The procedure for industrial expertise, containing:

– study of processes and technological stages of production (confirmation of compliance with the examination criteria);

– calculation of production capacities, including individual components and production processes (according to the methodology developed by the industry association);

– calculation of the share of local content for statistics of state bodies.

The industrial certificate is:

– available for receipt by any business entity, regardless of residence;

– a barrier for domestic pseudo-producers by developing a methodology for determining the actual production;

– a tool for ranking business entities by the level of competitiveness of production.

In order to implement the institute «Industrial Certificate», it is used in public procurement and procurement of national companies in a competition with a preliminary qualification selection. Thus, one of the qualifying criteria for participation in the prequalification is the presence of an Industrial Certificate. It is also

possible to take into account the presence of an Industrial Certificate and its level in a differentiated (point) evaluation of tender proposals.

The Institute of Industrial Certification also gave new powers to industry associations (unions) accredited by the National Chamber of Entrepreneurs of the Republic of Kazakhstan, which led to an increase in their number and expansion of activities.

For example, in 2016, the total number of associations (unions) accredited in the National Chamber of Entrepreneurs was 126, in 2017 28 associations (unions) were accredited, in 2019 174 associations (unions) were accredited in the National Chamber of Entrepreneurs, according to updated information on as of 2020, 186 associations (unions) are accredited in the National Chamber of Entrepreneurs.

According to the Law of the Republic of Kazakhstan «On the National Chamber of Entrepreneurs of the Republic of Kazakhstan», the Rules for Accreditation of Associations (Unions) in the system of the National Chamber of Entrepreneurs of the Republic of Kazakhstan, associations of legal entities and (or) individual entrepreneurs in the form of an association (union) are entitled to pass:

- Republican intersectoral, sectoral associations (unions);
- Republican associations (unions) of small, medium and (or) large businesses [4].

Analyzing the practice of industrial certification, this study proposes recommendations for solving the above problematic issues. In order to bring with the obligations assumed by the Republic of Kazakhstan within the framework of the World Trade Organization and the Eurasian Economic Union, the certificate of origin of goods of the form «ST-KZ», confirming the share of the local content of products, is excluded from public procurement and procurement of the National Welfare Fund «Samruk-Kazyna» Joint Stock Company .

Meanwhile, the experience of applying ST-KZ showed that the principle of determining the share of local content, in addition to confirming the actual production by the applicant, was an instrument of unfair competition. In addition, since «ST-KZ» determined only the country of origin of the goods and did not determine the production capacity of the enterprise, in most cases there were cases of the development of «pseudo-producers» of products. In this regard, in order to exclude such cases and develop Kazakhstani production, it becomes necessary to introduce an Industrial Certificate. The certification procedure will include the following sub-procedures:

- industrial expertise in accordance with special requirements for production;
- calculation of production capacity for each product range.
- calculation of the share of local content according to the previously approved methodology in ST-KZ;

It is very important for each company to obtain an Industrial Certificate, which makes it possible to get into the Register of Domestic Manufacturers, as they expect to receive large orders. With the receipt of an industrial certificate, their prospects for participation in various tenders and purchases will significantly increase, where they can show their abilities, compete with domestic producers, and also have an advantage over importers. Since July 1, 2019, the industrial certificate has become mandatory for participation in public procurement. Corresponding changes to the rules for public procurement were made by the Ministry of Finance of the Republic of Kazakhstan. Taking into account the experience of the «Rules for determining the country of origin of goods, issuing a certificate of origin of goods and canceling its validity», approved by the Order of acting. Minister for Investment and Development of the Republic of Kazakhstan dated February 24, 2015 No. 155», it becomes clear that the document does not take into account a number of «narrow» specifics of individual industries. In connection with the foregoing, the chosen direction of scientific research is relevant at the present time.

The reliability of the obtained scientific results, practical recommendations and conclusions is ensured by the use of modern scientific methodology and the use of modern general scientific research methods, such as modeling, comparison method and system analysis.

In the course of the study, statistical data were analyzed and used, a comparison was made with advanced international documents.

The work has found wide application of the key provisions of the works of domestic and foreign scientists on the problems of technical regulation.

The information base of the study was: regulatory legal acts of the Republic of Kazakhstan; statistical data of the National Chamber of Entrepreneurs «Atameken», other organizations and publications; scientific works of domestic and foreign scientists on the issues being developed. The materials of scientific conferences and seminars, periodicals, data published in regulatory documents, and electronic media were widely used.

The research methods used solve the scientific problem of theoretical substantiation and development of amendments and additions to the «Rules for the formation and maintenance of the register of domestic producers of goods, works and services, as well as the issuance of an industrial certificate».

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2. The procedure for industrial expertise, containing:
 - study of processes and technological stages of production (confirmation of compliance with the examination criteria);
 - calculation of production capacities, including individual components and production processes (according to the methodology developed by the industry association);
 - calculation of the share of local content for statistics of state bodies.

With the receipt of an industrial certificate, companies significantly increase the prospects for participation in various tenders and purchases, in which they can:

- show their abilities and get into the Register of Commodity Producers of the Samruk-Kazyna holding, where the entrepreneur is awarded 20 % to the points scored in the preliminary qualification selection of the Samruk-Kazyna Fund;
- freely participate in competition with domestic producers;
- have an advantage over foreign suppliers.

The National Chamber of Entrepreneurs «Atameken» has been issuing Industrial Certificates since April 2019. Taking into account the fact that the Industrial Certificate is a relatively new instrument of technical regulation, in the process of research, a point analysis was made not only of the issuance procedure, but also of the practical application of the Industrial Certificate for 24 months of validity.

The National Chamber of Entrepreneurs has established a relationship between all participants in the process: entrepreneurs, industry associations, and government agencies. The result is a decision on the need to make amendments and changes to the «Rules for the formation and maintenance of the register of domestic producers of goods, works and services, as well as the issuance of an industrial certificate» approved. by the decision of the Presidium of the National Chamber of Entrepreneurs of the Republic of Kazakhstan «Atameken» dated December 28, 2018. No. 28.

The long-term priority of the country's industrial policy: «Strategy-Kazakhstan 2050» provides for measures for the stable development of the technical regulation industry through the development and application of innovative technologies. One of the key objectives of the «Strategy-Kazakhstan 2050» are:

- increasing the competitiveness of business entities;
- support for domestic engineering;
- export support.

The above tasks in the Republic of Kazakhstan are called upon to be solved by the Institute of Industrial Certification. In the process of testing the procedure for issuing industrial certificates to domestic producers of goods, works and services, and subsequent research, certain problems of industrial certification were identified:

1. overpriced industrial expertise;
2. lack of industry experts;
3. insufficient number of testing laboratories for furniture industry products;
4. The requirements for the issuance of an Industrial Certificate are overstated and are applied in excess of the basic, basic criteria, which is an important problem.

At the moment, questions and shortcomings regarding individual paragraphs and subparagraphs of the Rules are still relevant. Let's consider them in more detail.

So, according to the current version of the Rules, the applicant must provide the following information: number, date of issue and expiration date of the conformity assessment (confirmation) document, if the products are subject to mandatory conformity assessment in accordance with the law.

But, further in the Rules, the following information is mentioned: a conformity assessment document may not be submitted if this condition is provided for by industry criteria. To eliminate discrepancies in the regulatory document, there is a need to use the remark “unless otherwise provided by industry criteria” in all paragraphs of the Rules relating to conformity assessment documents.

Also, in the current version of the Rules, the criterion for processing goods is a change in the product code according to the Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union at the level of any of the first six characters that occurred as a result of processing the goods.

Making additions to the Rules regarding changing the product code for the Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union at the level of any of the first four characters will allow manufacturing companies with a full production cycle to receive advantages and preferences compared to others.

For example, Kazakh producers of mineral fertilizers, at whose plants, in the process of mixing chemical and other types of raw materials, a qualitative change in composition occurs, and, accordingly, a change in the type and range of action of the fertilizer, will take a preferable position among competing enterprises in this area, whose production is only simple operations of mixing ingredients. without chemical transformations.

To make it clearer, let's look at some cases.

For the production of mineral fertilizers with a high content of potassium with the code of the Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union 3104900009,

mineral fertilizers with a lower content of potassium with the codes of the Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union 3104205000 and 3104209000 were used as raw materials, i.e. the code of the Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union of the product has changed at the level of the first six characters, while the product has not acquired fundamentally new properties. And, for example, when mixing nitrogen (code of the Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union 3102), phosphorus (code of the Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union 3103) and potash (code of the Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union 3104) mineral fertilizers, a complex nitrogen- phosphorus-potassium mineral fertilizer with an extended range of action with the code of the Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union 3105, i.e. there was a change at the level of the first four signs of the Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union.

This example is taken from the agrochemical industry, which is the most important for the economy of Kazakhstan, and fully reflects the need for the aforementioned change in the Rules.

Further, the analysis of the Rules showed that at one of the first stages of the Industrial Certification, the Applicant, at the time of filling out an application for inclusion in the Register of domestic manufacturers in the electronic certification system, uploads documents on the presence of real estate (certificate) or a lease agreement.

In our opinion, it is necessary to consider, in exceptional cases, the provision of several lease agreements for the leased premises from one landlord and tenant during the previous 3 years, with the provision of utility bills for the corresponding period.

Also, in the current Rules, a positive opinion of an industry expert is the basis for the inclusion of the Applicant in the Register of domestic manufacturers. At the same time, the period of validity of the conclusion is not specified.

During the analysis of incoming applications, it was revealed that the Applicants provided an opinion signed by an industry expert 6 or more months before the application was submitted, which is a risk to the reputation of industry experts, because during this time there may have been changes related to production capacity. In this connection, it would be more reasonable to indicate the period of validity of the opinion of an industry expert up to 3 months from the date of its signing.

In addition, the current version of the Rules states that the basis for the exclusion of a domestic manufacturer from the Register of Domestic Manufacturers is the refusal of a domestic manufacturer to allow the verification commission to enter the location of production within the established time frame.

Since the Industrial Certificate is issued for a period of 36 months, it is necessary to provide the right to conduct an Inspection of the enterprise by industry associations to confirm the production of the declared products and the legality of issuing an opinion by an industry expert after 12 months from the date of issue of the Industrial Certificate.

At the same time, we believe that in this matter the Inspection should be equated with the Verification inspection of the enterprise. Refusal to allow an expert of an industry association to conduct an Inspection without justifying the reasons should entail the withdrawal of the Industrial Certificate from the enterprise.

According to the current version of the Rules, an industry association must provide at least one industry expert in each region, city of republican significance and the capital, where operating enterprises of the industry are located.

Representation of industry experts in all regions, cities of republican significance today is not feasible due to the need for competent experts in each administrative-territorial unit. The content of a competent and objective expert should be fed in the form of a sufficient amount of work and, accordingly, decent wages. Due to the lack of a clear understanding of the scope of work in a particular region, the quality management system cannot afford a worthy permanent monthly maintenance of an expert.

The involvement of experts who are employees of industry enterprises in the regions is considered inappropriate due to the existing risks for both the Applicants and the quality management system.

Discussion

In the Rules, the exclusion of an industry expert from the List of industry associations (unions) and industry experts is carried out by decision of the verification commission. It is also necessary to provide for such a decision by the industry Association (union), which certified and recommended the industry expert. Taking into account that the industry association bears reputational and material responsibility for the quality of the expertise carried out by the expert and the issuance of an opinion on the right to include the Applicant in the Register of Domestic Producers of Goods, Works and Services, we believe that this change should be included in the new version of the Rules. An industry association should have the right to recall an industry expert on its own.

It is also important to enter codes into the Unified Nomenclature Directory of Goods, Works and Services for the manufactured goods, since the amendments made to the Rules dated February 20, 2020 created conditions that allow unscrupulous enterprises to take part in the procurement of those commodity items for which they have no real production (for example, light industry manufacturers are involved in procurement of

the furniture industry). The Rules for issuing an Industrial Certificate must be divided into categories - micro, small, medium and large production (depending on the volume of purchases, financial stability):

- Micro – up to 100 monthly calculated indicators;
- Small – from 101 monthly calculation indices to 1000 monthly calculation indices;
- Average – from 1001 monthly calculation indices to 100000 monthly calculation indices;
- Large – over 100,000 monthly calculation indices.

This separation will streamline the process of confirming the presence of domestic production and will provide an opportunity for manufacturers who have received an Industrial Certificate to participate in the process of public procurement and procurement of the quasi-public sector only within the category that they were able to confirm.

Also, the Rules should provide for liability measures for an industry expert in terms of delaying the analysis of the production and documents of the applicant, violations in the execution of the conclusion, as well as following the results of a commission visit to the production.

Conclusion

Based on the above, we can conclude that at the moment the Rules need to be carefully finalized. It is necessary to consider this issue together with authorized state bodies, associations and business representatives, since obtaining an Industrial Certificate will directly affect participation in public procurement, and, accordingly, the economy of the Republic of Kazakhstan.

Summarizing the above, it can be noted that, in terms of its potential, the Industrial Certificate claims to become one of the most effective tools for realizing the economic opportunities of the Republic of Kazakhstan and, accordingly, will help real domestic producers. In this article, we have proposed specific measures that can help unlock the potential of the industrial certification institute.

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Қазақстан Республикасында индустриялық сертификатты беру рәсімі мәселелерін талдау және оларды шешу жолдары

Әрбір компания үшін отандық өндірушілердің тізіліміне кіруге мүмкіндік беретін Индустриялық сертификатты алу өте маңызды, өйткені олар үлкен тапсырыстар алуға үміттенеді. Индустриялық сертификатты алғаннан кейін олардың әртүрлі тендерлер мен сатып алуларға қатысу перспективалары едәуір артады, онда олар өз қабілеттерін көрсете алады, отандық өндірушілермен бәсекеге түсе алады, сондай-ақ импорттаушылар алдында артықшылыққа ие болады. 2019 жылғы 1 шілдеден бастап индустриялық сертификат Мемлекеттік сатып алуға қатысу үшін міндетті болды. Мемлекеттік сатып

алуларды жүзеге асыру ережелеріне тиісті өзгерістерді ҚР Қаржы министрлігі енгізді. Қазақстан Республикасы Инвестициялар және даму министрінің м.а. 24.02.2015 ж. №155 бұйрығымен бекітілген «тауардың шығарылған елін айқындау, тауардың шығарылуы туралы сертификат беру және оның күшін жою жөніндегі қағидалардың» тәжірибесін ескере отырып, құжат жекелеген өндірістердің бірқатар» тар «ерекшеліктерін ескермейтіні түсінікті болады.

Мақаланың мақсаты – минералдық тыңайтқыштар өндіру жөніндегі химия өнеркәсібі кәсіпорнының Индустриялық сертификат алу мүмкіндігі үшін «отандық тауарлар, жұмыстар мен көрсетілетін қызметтер өндірушілердің тізілімін қалыптастыру және жүргізу, сондай-ақ Индустриялық сертификат беру қағидаларына» өзгерістер мен толықтырулар әзірлеу.

Берілген зерттеуде келесідей әдістер қолданылды: әдеби дереккөздерді зерттеу және талдау, Индустриялық сертификатты беру рәсімдерін модельдеу және статистика.

Авторлардың ұсынысы бойынша қолдану проблемалары зерделенді, осы проблемаларды шешу жолдары табылды және «отандық тауар, жұмыс және қызмет өндірушілер тізілімін қалыптастыру және жүргізу, сондай-ақ Индустриялық сертификат беру қағидаларына» өзгерістер мен толықтырулар әзірленді. қазіргі уақытта ережелер мұқият пысықтауды қажет етеді. Бұл мәселені уәкілетті мемлекеттік органдармен, қауымдастықтармен және бизнес өкілдерімен бірлесіп қарау қажет, өйткені Индустриялық сертификат алу Мемлекеттік сатып алуға қатысуға, тиісінше Қазақстан Республикасының экономикасына тікелей әсер ететін болады.

Түйінді сөздер: Индустриялық сертификат, Мемлекеттік сатып алу, Техникалық реттеу.

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Анализ проблем процедуры выдачи Индустриального сертификата в Республике Казахстан и пути их решения

Для каждой компании важным является получение Индустриального сертификата, дающего возможность попасть в Реестр отечественных производителей, так как они рассчитывают на получение больших заказов. С получением Индустриального сертификата у них значительно возрастут перспективы участия в различных тендерах и закупках, где они смогут показать свои способности, конкурировать с отечественными производителями, а также иметь преимущество перед импортерами. С 1 июля 2019 года Индустриальный сертификат стал обязательным для участия в государственных закупках. Соответствующие изменения в правила осуществления госзакупок внесло Министерство финансов РК. Учитывая опыт реализации «Правил по определению страны происхождения товара, выдаче сертификата о происхождении товара и отмене его действия», утвержденных Приказом и.о. Министра по инвестициям и развитию Республики Казахстан от 24.02.2015г. №155, становится понятно, что документ не учитывает ряд «узких» специфик отдельных производств.

Цель статьи - разработать изменения и дополнения к действующим «Правилам формирования и ведения реестра отечественных производителей товаров, работ и услуг, а также выдачи Индустриального сертификата» для последующей возможности получения Индустриального сертификата предприятием химической промышленности по производству минеральных удобрений.

В рамках данного исследования применялись такие методы, как анализ литературных источников, статистика и моделирование процедуры выдачи индустриального сертификата.

Авторы предлагают пути решения заявленных проблем, изменения и дополнения к «Правилам формирования и ведения реестра отечественных производителей товаров, работ и услуг, а также выдачи индустриального сертификата. Предлагается рассмотреть этот вопрос совместно с уполномоченными государственными органами, ассоциациями и представителями бизнеса, так как получение Индустриального сертификата напрямую будет влиять на участие в государственных закупках, соответственно, и на экономику Республики Казахстан.

Ключевые слова: Индустриальный сертификат, государственные закупки, техническое регулирование.

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