



Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures
Committee on Safeguards

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**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

COSTA RICA

Supplement

The following communication, dated 27 November 2019, is being circulated at the request of the delegation of Costa Rica.

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 12.6 of the Agreement on Safeguards and Article 32.6 of the Agreement on Subsidies and Countervailing Measures, we submit herewith a copy of Executive Decree No. 40559-MEIC approving the text of the Rules of Procedure for the Application of Measures to Combat the Circumvention of Anti-Dumping, Countervailing and Safeguard Duties.

**RULES OF PROCEDURE FOR THE APPLICATION OF MEASURES
TO COMBAT THE CIRCUMVENTION OF ANTI-DUMPING,
COUNTERVAILING AND SAFEGUARD DUTIES**

TITLE I

CHAPTER I

Purpose, Scope and Competence

Article 1.- Purpose. The purpose of these rules is to set forth the procedures for extending trade defence measures to other products, or ensuring proper compliance with them, in the case of a like product affected by an existing measure, or when, subsequent to an investigation under the terms of these rules, it is demonstrated that there is circumvention of a trade defence measure, negating or impairing the remedial effects of that measure.

Article 2.- Scope. All imports of products giving rise to a practice aimed at circumventing existing trade defence measures are subject to these rules. Examples include: like products, whether or not slightly modified; like products declared for other uses, parts or inputs of those products; and semi-finished or pre-industrialized products.

Article 3.- Competence. In its capacity as the investigating authority (IA), the Trade Protection Directorate (DDC) of the Ministry of the Economy, Industry and Trade (MEIC) is responsible for conducting anti-circumvention investigations and issuing technical recommendations for consideration by the Minister of the Economy, Industry and Trade, with the Minister having responsibility for deciding whether to apply an anti-circumvention measure.

CHAPTER II

General Definitions, Abbreviations and Acronyms

Article 4.- For the purposes of these rules, the following terms shall have the following meanings:

ADA: Anti-Dumping Agreement

ASCM: Agreement on Subsidies and Countervailing Measures

SGA: Safeguards Agreement

Investigating authority (IA): Trade Protection Directorate of the Ministry of the Economy, Industry and Trade (MEIC)

DDC: Trade Protection Directorate of the Ministry of the Economy, Industry and Trade

Circumvention: For the purposes of these rules, circumvention shall mean those actions taken by foreign producers, exporters or importers aimed at evading payment of anti-dumping, countervailing or safeguard duties in effect in Costa Rica.

Essential facts: Elements giving rise to a practice of circumvention of trade defence measures and forming the basis for the decision whether to extend the measures to other products.

Confidential information: Documentation or material that may give a significant competitive advantage to a competitor or opposing party or that would have a significantly adverse effect upon the person supplying the information or a third party that has received it, in line with Article 6.5 of the ADA and Article 12.4 of the ASCM.

Publicly available information: In the context of these rules, this shall mean the documentation that will be freely available to interested parties during the investigation.

Direct interest: For the purposes of these rules, this shall mean the right of an interested party to call on the IA to enforce an anti-circumvention measure.

Anti-circumvention investigation: An investigation to determine whether actions were undertaken to circumvent Costa Rica's trade defence measures, negating or undermining the remedial effects of those measures.

On-the-spot investigations: Field visits to interested parties in connection with an anti-circumvention investigation.

Anti-circumvention measure: A measure extending the scope of a trade defence measure to other products or ensuring proper compliance with it, in the case of a like product affected by the measure in effect.

Trade defence measure: Anti-dumping, countervailing or safeguard measures applied under Articles VI and XIX of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement), the Agreement on Subsidies and Countervailing Measures or the Agreement on Safeguards.

MEIC: Ministry of the Economy, Industry and Trade

WTO: World Trade Organization

Slightly modified product: A product that has undergone minor changes without alteration to its essential characteristics.

Product subject to an anti-circumvention investigation: Those products giving rise to a practice aimed at circumventing existing trade defence measures. Examples include: like products, whether or not slightly modified; like products declared for other uses, parts or inputs of those products; and semi-finished or pre-industrialized products.

Like product: An identical product, i.e. alike in all respects to the product subject to the trade defence measure, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of said product.

Product subject to the trade defence measure: The product with respect to which a trade defence measure is in effect.

Semi-finished or pre-industrialized product: A tangible good that has undergone physical or chemical processing and is turned into inputs for other production units, which will then have processes performed on them to obtain a final good. Physical mixture, polishing, repackaging, dilution and conversion are excluded from these processes.

CHAPTER III

Circumvention of Anti-Dumping, Countervailing and Safeguard Measures

Article 5.- Establishing circumvention of anti-dumping, countervailing or safeguard measures. To establish that a trade defence measure has been circumvented, the IA must, on the basis of satisfactory evidence, determine that there has been a significant change in the pattern of trade of the product under investigation, *vis-à-vis* either the country subject to the trade defence measure or third countries. The change must have resulted from one or more of the practices set out below and there must be found to be prejudice to or impairment of the remedial effects of the trade defence duty in effect. The existence of such change may be examined from the initiation of the investigation that led to the application of the trade defence measure until the end of its implementation.

Article 6.- Circumvention practices. The following practices shall be considered to constitute circumvention, where the intention to evade an existing anti-dumping, countervailing or safeguard measure is demonstrated:

- (a) The importation of a product like the product subject to the trade defence measure through suppliers that are subject to a lesser individual measure or no measure at all and from the country subject to the measure in effect.
- (b) The importation of a product like the product subject to the trade defence measure or via third countries.
- (c) The importation of a product like the product subject to the trade defence measure declared for other uses.
- (d) The importation of a product like the product subject to the trade defence measure that has been slightly modified in order to be brought in under different tariff lines that are not subject to trade defence measures, provided that the modifications do not alter the essential characteristics of the product and its end use.
- (e) The importation of a semi-finished or pre-industrialized product that is turned into an input for other production units and undergoes production processes in national territory to obtain the product that is subject to the trade defence measure.
- (f) The importation of parts of the product subject to the trade defence measure for the purpose of producing or assembling it in the Costa Rican market.
- (g) The importation of the product subject to the trade defence measure, assembled or subjected to a final stage of production in a third country, the parts or inputs of which originate in the country subject to the trade defence measure. The foregoing, provided that the parts or inputs in question as a whole constitute 60% or more of the total value of the parts or inputs of the finished product. This does not apply to imports from a third country under an existing trade agreement which comply with the rules of origin laid down in that agreement.
- (h) Any other circumvention behaviour which is shown to undermine the remedial effects of the trade defence measures imposed.

For the purposes of paragraphs (e), (f) and (g), circumvention shall not be deemed to exist where the total value-added of the parts or inputs used during the assembly or production operation exceeds 25% of the production cost of the finished product.

CHAPTER IV

Admissibility of Request to Initiate Anti-Circumvention Investigation

Article 7.- Initiation of proceedings. Investigations to determine whether trade defence measures have been circumvented may be initiated at the request either of the sector producing the product subject to the trade defence measure or a natural or legal person demonstrating a direct interest in the investigation or, in exceptional circumstances, *ex officio* by the IA.

Article 8.- Request for an anti-circumvention investigation. All requests for anti-circumvention investigations must be submitted to the IA and be based in satisfactory evidence of the facts alleged (i.e. evidence that is affirmative, objective and verifiable) which is relevant for the initiation of an anti-circumvention investigation.

Furthermore, to be admissible, the request must be submitted six months after implementation of the trade defence measure allegedly being circumvented.

Article 9.- Requirements for request. A request for an anti-circumvention investigation must include the following:

- (a) The name of the party making the request, the identification details of the party or the party's representatives and the capacity in which they are appearing. Legal representatives must present their powers of attorney, their scope and the legal personality of the principal.
- (b) The place or means of notification.
- (c) An indication of the measure allegedly circumvented.
- (d) Objective, clear and sufficient evidence of the circumvention practice, in accordance with the definition of circumvention contained in these rules and Articles 5 and 6 hereof.
- (e) Clear and sufficient evidence of the prejudice to or impairment of the remedial effects of the trade defence duty in effect.
- (f) A clear and precise formulation of the claim being made, consistent with the description of the facts and background.
- (g) A complete description of the product subject to the trade defence measure and the product with respect to which the request to initiate an anti-circumvention investigation was made; the physical, chemical, technical or functional characteristics of the product, supported by technical catalogues and laboratory tests, fully identifying the good in question.
- (h) The name of the country or countries of origin or provenance of the product with respect to which the request to initiate an anti-circumvention investigation was made.
- (i) The identification details and full addresses of each known exporter or foreign producer and the importers of the product with respect to which the request to initiate an anti-circumvention investigation was made.
- (j) The signature of the party making the request or the party's representative.

Article 10.- Resolution regarding initiation or dismissal of the request. After receiving a request, the IA will have 10 calendar days to determine whether the requirements set forth in Article 9 of these rules have been met.

If it determines that the party making the request has not provided a required item, the party will be granted 10 working days, from the notification of the deficiency, to add the missing items.

After the deficiency is rectified, or if the request submitted is complete, the IA will have 10 calendar days to review the admissibility of the request and to initiate the investigation or dismiss the request, as applicable. The foregoing shall not preclude the applicant from submitting a new request.

The resolution regarding the initiation of an investigation must be notified to the interested parties identified in the request within three calendar days of the date it is issued.

Article 11.- Appeals during investigation proceedings. In the proceedings, ordinary appeals are available only against resolutions regarding initiation or dismissal and all evidence, in accordance with Costa Rica's General Public Administration Law.

Article 12.- Customs clearance. The initiation of an anti-circumvention investigation shall not hinder customs clearance.

CHAPTER V

Investigations

Article 13.- Period of investigation. Investigations into the circumvention of anti-dumping, countervailing and safeguard measures must be completed within six months of their initiation. This period may be extended for up to half of the ordinary period on the basis of a justified request from a party or a reasoned opinion from the IA.

Article 14.- Interested parties. For the purposes of these rules, "interested parties" shall include:

- (a) exporters, foreign producers or importers of the product subject to the anti-circumvention investigation, or trade or business associations a majority of the members of which are producers, exporters or importers of the product;
- (b) the government or governments of the country exporting the product subject to the anti-circumvention investigation; and
- (c) producers of the product that is like the product subject to the anti-circumvention investigation in Costa Rica, or trade or business associations a majority of the members of which produce the like product in the territory of the importing Member;
- (d) any other interested party which, in the opinion of the IA, demonstrates a direct interest in the investigation.

Article 15.- Request for evidence. Together with the resolution regarding initiation, the IA shall request evidence from the interested parties, who will have 20 calendar days to provide it. This period may be extended by up to half the ordinary period, at the discretion of the IA, if a party makes a justified request.

Article 16.- Verification of information. The IA may, at any time during the investigation, carry out on-the-spot visits to verify information. In such cases, it will, prior to the visit, inform the interested parties of the general nature of the information to be verified. The foregoing shall not preclude it from requesting further details during the visit in light of the information obtained.

The IA may also use other means it considers appropriate for the purposes of determining the accuracy of the evidence.

Article 17.- Period of analysis of information. After receiving information from the parties, the IA will have three calendar months to analyse the evidence provided, in accordance with Article 13 of these rules. This period encompasses investigation, analysis and on-the-spot verification.

Article 18.- Report on essential facts. Once the period indicated in the preceding article (evidentiary period) of these rules comes to an end, the IA will send the interested parties a report on the essential facts, which will form the basis for the decision whether to apply an anti-circumvention measure. The parties will have 15 calendar days from the next working day after notification of that report to set out their arguments and defend their interests.

Article 19.- Hearing. Together with the report on the essential facts mentioned above, and with 15 calendar days' notice, the interested parties will be invited to a private oral hearing.

The purpose of the hearing is to give the interested parties an opportunity to orally question adverse parties with respect to, or to refute, information and evidence submitted to the IA, enabling this and other interested parties to seek further explanations or specific clarifications. The hearing shall conclude the evidentiary period.

Article 20.- Technical report. After the hearing, the IA will have 15 calendar days to issue a final technical report, which will conclude the investigation.

During the same period, it must send the technical report and case record to the Minister of the Economy, Industry and Trade. In the report, the IA must make a recommendation as to whether to extend the trade defence measure to the product subject to the anti-circumvention investigation.

Article 21.- Final resolution. After receiving the report with the recommendation and the record, the Minister of the Economy, Industry and Trade will have 30 working days to issue a resolution deciding the merits of the case.

In the event that the higher body decides to depart from the IA's technical report, it must justify its decision technically, taking account of the evidence in the administrative record kept for that purpose.

Article 22.- Appeals. Motions to reconsider resolutions ordering that existing circumvention measures be extended or not be extended may be filed with a higher body, in accordance with Costa Rica's General Public Administration Law.

Article 23.- Validity of anti-circumvention measure. An anti-circumvention measure will remain in force from the signature of the resolution through the term of the trade defence measure. In no event will it continue to be applied if the trade defence measure sought to be circumvented has expired.

Article 24.- Publication and notification of final resolution. The final resolution will be published in the official journal, *La Gaceta*, at the interested party's expense. The resolution will be notified to the parties within five days of its publication in the official journal.

The IA will communicate the decision to the General Directorate of Customs of the Ministry of Finance so that the measure in question may be extended in accordance with the final resolution.

If the anti-circumvention measure relates to a safeguard measure, the IA will immediately notify the relevant WTO committee.

CHAPTER II

Final Provisions

Article 25.- The record and access thereto. All information provided by interested parties, as well as information collected *ex officio* by the IA, will be filed chronologically.

The administrative record must comprise two files, one containing publicly available information and the other containing confidential information.

The IA, the Ministerial Office, interested parties, their representatives and counsel, duly accredited for the purpose, shall be entitled, at any stage of the proceedings, to examine, read or copy any document or item of evidence in the record and to request certification thereof, with the exception of confidential information, which shall be accessible only to the IA, the Ministerial Office and the party that supplied the information.

In accordance with Article 12 of the Central American Regulations on Unfair Trade Practices and Article 17 of the Regulations on Safeguards, the parties indicated in the preceding paragraph may not disclose information contained in the administrative record during the course of the investigation; however, once the investigation has been concluded, any person may access the file containing public information and request authorization from the IA to photocopy it.

Article 26.- Investigative powers. The IA may at any time during an anti-circumvention investigation request any type of additional information, including technical opinions from different government agencies, which will provide them within 10 days at the latest, in accordance with Article 262 of the General Public Administration Law.

Likewise, under Article 67 of Law No. 7472, the Law on the Promotion of Competition and Effective Consumer Protection, the IA may request information from any private actor to fulfil the objective of these rules.

Article 27.- Suppletive application. The rules, provisions and principles of public law and, in the absence thereof, ordinary law may be applied on a supplementary basis to cases not provided for in these rules.

Article 28.- Entry into force. These rules will enter into force from their publication in the official journal, *La Gaceta*. Done in the Office of the President of the Republic, on the fifteenth day of May two thousand seventeen.
