



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

Original: English

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

GHANA

The following communication, dated 10 December 2019, is being circulated at the request of the delegation of Ghana.

GHANA INTERNATIONAL TRADE COMMISSION ACT, 2016 ACT 926

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**THE NINE HUNDRED AND TWENTY-SIXTH ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED
GHANA INTERNATIONAL TRADE COMMISSION ACT, 2016**

AN ACT to establish the Ghana International Trade Commission to provide for the regulation of the international trade of Ghana in conformity with the rules and regulations of the world trade system and to provide for related matters.

DATE OF ASSENT: 14th September, 2016

Passed by Parliament and assented to by the President:

ESTABLISHMENT OF THE GHANA INTERNATIONAL TRADE COMMISSION

1 ESTABLISHMENT OF THE COMMISSION

1. There is establishment by this Act a body corporate with perpetual succession to be known as the Ghana International Trade Commission.
2. For the performance of its functions, the Commission may acquire and hold movable and immovable property, dispose of property and enter into a contract or any transaction relating to the objects of the Commission.
3. Where there is a hindrance to the acquisition of property, the property may be acquired for the Commission under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Commission.

2 OBJECTS OF THE COMMISSION

1. The objects of the Commission are to
 - a. oversee the compliance of Ghana with international trade rules and regulations;
 - b. ensure fairness, efficiency, transparency and objectivity in the application of measures affecting international trade and the use of world trade measures;
 - c. ensure fair competition for persons engaged in domestic production and international trade; and
 - d. protect the domestic market from the impact of unfair trade practices in the course of international trade.
2. In furtherance of the objects specified in subsection (1), the Commission shall be guided by the treaty provisions of the World Trade Organisation and the general principles of international trade law.

3 FUNCTIONS OF THE COMMISSION

1. To achieve the objects, the Commission shall
 - a. monitor and review the pattern of Ghana's international trade and advise the Minister on matters affecting trade and industry;
 - b. study, identify and recommend to the Minister tariff levels for specific sectors of the economy with due regard to the effective rate of protection;
 - c. conduct studies and publish reports on the competitiveness of Ghana's tariff structure and the impact of the tariff structure on domestic industry, market access opportunities and challenges in relation to exports from Ghana;

- d. provide analytical support and advice to the Minister on proposals for trade-related legislation;
 - e. advise the Minister on the preparation of documentation for and the negotiating position of the Government of Ghana during international trade negotiations;
 - f. monitor and advise the Minister on Ghana's compliance with its bilateral and multilateral treaty obligations in the area of international trade;
 - g. enquire into and determine complaints brought before the Commission in relation to
 - i. safeguard measures;
 - ii. the subsidisation of imported products by foreign governments;
 - iii. the dumping of imported products into the domestic market;
 - iv. tariff adjustments; and
 - v. any other measure which affects fair trade determined by the Minister;
 - h. settle disputes between importers and the Customs Division of the Ghana Revenue Authority in respect of the classification and valuation of products that are imported; and
 - i. perform any other function that is necessary for the attainment of the objects of the Commission
2. In the performance of the functions, the Commission shall
- a. ensure that the Commission is objective and fair; and
 - b. seek to balance the competing interest of persons
 - i. that appear before the Commission; and
 - ii. indirectly affected by the decisions and actions of the Commission.

4 INDEPENDENCE OF THE COMMISSION

Except as otherwise provided in the Constitution or by any other law not inconsistent with the Constitution, the Commission is not subject to the direction or control of a person or an authority in the performance of the functions of the Commission.

5 MINISTERIAL DIRECTIVES

1. The Minister may give directives in writing to the Commission on matters of policy other than matters under adjudication.
2. The directives shall be consistent with the objects of this Act.

GOVERNANCE OF THE COMMISSION

6 GOVERNING BODY OF THE COMMISSION

1. The governing body of the Commission is a Board consisting of
 - a. a chairperson who is a retired Justice of the Superior Court of Judicature or a person qualified to be appointed as a Justice of the Superior Court of Judicature;
 - b. one deputy chairperson; and
 - c. three other persons at least one of whom is a woman.

2. The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.
3. The President shall in making appointments under this section consider the knowledge and expertise of the persons and in particular the knowledge of a person in the discipline of economics, accounting, international trade law, international marketing and distribution of goods and services or experience in industry.
4. The Board shall ensure the proper and effective performance of the function of the Commission.
5. The Executive Secretary shall be the secretary to the Governing Board.

7 DUTIES AND LIABILITIES OF A MEMBER OF THE BOARD

1. A member of the Board has the same fiduciary relationship with the Commission and the same duty to act with loyalty and in good faith as a director of a company incorporated under the Companies Act, 1963 (Act 179).
2. Without limiting subsection (1), a member of the Board shall not
 - a. engage in a conduct or an activity that may undermine the integrity, independence and impartiality of the Commission;
 - b. be a party to an investigation, hearing, or proceeding concerning a matter in respect of which the member has an interest;
 - c. make private use of, or profit from any confidential business information obtained as a result of the performance of the duties of the member; or
 - d. make improper use of information acquired by virtue of the position of the member as a member of the Board so as to gain, directly or indirectly, a benefit for the member to the detriment of the Commission.
3. A member of the Board shall, prior to the taking of office, declare and file with the Commission a disclosure statement containing information relating to the past employment and business affiliation of the member.
4. A member of the Board who contravenes this section ceases to be a member of the Board.

8 TENURE OF OFFICE OF MEMBERS OF THE BOARD

1. A member of the Board shall hold office for a period not exceeding five years and is eligible for re-appointment for another term only.
2. A member of the Board may at any time resign from office in writing addressed to the President through the Minister.
3. A member of the Board who is absent from three consecutive meetings without sufficient cause ceases to be a member of the Board.
4. The President may, by letter addressed to a member, revoke the appointment of that member.
5. Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy
6. Where there is vacancy
 - a. under subsection (2) or (3), section 7(4) or section 10 (2);

- b. as a result of a declaration under subsection (5); or
- c. by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

9 MEETING OF THE BOARD

1. The Board shall meet at least once every three months for the despatch of business at the time and in the places determined by the chairperson.
2. The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extra-ordinary meeting of the Board at the place and time determined by the chairperson.
3. The quorum at a meeting of the Board is five members of the Board or a greater number determined by the Board in respect of an important matter.
4. The chairperson shall preside at meetings of the Board and in the absence of the chairperson, the deputy chairperson shall preside and in the absence of the deputy chairperson, a member of the Board elected by the members present from among their number shall preside.
5. Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.
6. The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

10 DISCLOSURE OF INTEREST

1. A member of the Board who has an interest in a matter for consideration
 - a. shall disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and
 - b. shall not participate in the deliberations of the Board in respect of the matter.
2. A member ceases to be a member of the Board if that member has an interest in a matter before the Board and
 - a. fails to disclose that interest, or
 - b. participates in the deliberations on the matter.

11 ESTABLISHMENT OF COMMITTEES OF THE BOARD

1. The Board may, establish committees consisting of members of the Board or non-members or both to perform a function of the Board.
2. A committee shall be chaired by a member of the Board.
3. The Board may assign to a committee a function determined by the Board but a committee composed of non-members is advisory only.
4. Section 10 applies to members of committees of the Board.

12 ALLOWANCES

Members of the Board and members of a committee of the Board shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance.

ADMINISTRATIVE AND FINANCIAL MATTERS

13 SECRETARIAT OF THE COMMISSION

1. The Commission shall have a Secretariat with departments and divisions determined by the Board as necessary for the effective performance of the functions of the Commission.
2. The Executive Secretary appointed under section 14 is the head of the Secretariat.

14 APPOINTMENT OF EXECUTIVE SECRETARY

1. The Commission shall have an Executive Secretary.
2. The President shall, in accordance with article 195 of the Constitution, appoint the Executive Secretary for the Commission.
3. The Executive Secretary shall hold office on the terms and conditions specified in the letter of appointment.

15 FUNCTIONS OF THE EXECUTIVE SECRETARY

1. The Executive Secretary
 - a. is responsible for the day to day administration of the Commission and is answerable to the Board in the performance of the functions under this Act; and
 - b. shall perform any other function determine by the Board.
2. The Executive Secretary may delegate a function to an officer of the Commission but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

16 APPOINTMENT OF OTHER STAFF

1. The President shall, in accordance with article 195 of the Constitution, appoint other staff of the Commission that are necessary for the proper and effective performance of the functions of the Commission.
2. The President may, in writing, delegate the power of appointment in subsection (1) to the Board.
3. The Commission may engage the services of a consultant or expert on the recommendation of the Board for the effective discharge of its functions.
4. Other public officers may be transferred or seconded to the Commission or may otherwise give assistance to it.

17 FUNDS OF THE COMMISSION

1. The funds of the Commission include
 - a. moneys approved by Parliament;
 - b. fees and charges that accrue to the Commission in the performance of the functions of the Commission;

- c. investment income that may accrue to the Commission; and
- d. grants.

2. The Commission shall seek approval in writing from the Minister responsible for Finance before investing the funds of the Commission in safe securities.

18 BANK ACCOUNT

The moneys for the Commission shall be paid into a bank account opened for that purpose with the approval of the Controller and Accountant General.

19 EXPENSES OF THE COMMISSION

1. The expenses of the Commission shall be paid from moneys provided for the Commission under section 17.

2. Where there are any excess moneys after the Commission has defrayed its cost and expenses in the performance of its functions, the Commission shall transfer that amount to the Consolidated Fund unless the Minister for Finance, in consultation with the Minister, otherwise authorises.

20 ACCOUNTS AND AUDIT

1. The Board shall keep books of accounts and proper records in the form approved by the Auditor-General.

2. The Board shall submit the accounts of the Commission to the Auditor-General for audit within three months after the end of the financial year.

3. The Auditor-General shall, not later than three months, after the receipt of the accounts audit the accounts and forward a copy of the audit report to the Minister.

4. The financial year of the Commission is the same as the financial year of Government.

21 ANNUAL REPORT AND OTHER REPORTS

1. The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Commission for the year to which the report relates.

2. The annual report shall include the report of the Auditor-General.

3. The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

4. The Board shall submit to the Minister any other report which the Minister may require in writing.

SPECIAL IMPORT MEASURES

22 IMPOSITION OF SPECIAL IMPORT MEASURES

1. Special import measures that may be imposed under this Act include

- a. safeguard measures;
- b. anti-dumping duties;
- c. countervailing duties; and

- d. tariff adjustment measures.
2. The Commission may impose a special import measure specified in paragraphs (b) and (c) of subsection (1)
 - a. on receipt of a written complaint filed by a domestic producer or a representative of the domestic producer that produces products that are similar or directly competitive with the products that are the subject of the complaint; or
 - b. on the initiative of the Commission where the Commission has sufficient evidence to justify the imposition of a special import measure in accordance with this Act.
 3. The Minister may, on the recommendation of the Commission, impose a special import measure specified in paragraphs (a) and (d) of subsection (1) where the Commission
 - a. receives a written complaint filed by a domestic producer or a representative of the domestic producer that produces products that are similar or directly competitive with the products that are the subject of the complaint; or
 - b. on the initiative of the Commission has sufficient evidence to justify the imposition of a special import measure in accordance with this Act.
 4. The Commission shall have the power to
 - a. suspend or terminate an investigation initiated for the purpose of imposing a special import measure;
 - b. impose provisional measures, including anti-dumping and countervailing duties; and
 - c. review its own findings and determination relating to the special import measure.
 5. In the exercise of the powers of the Commission under this section, the Commission shall have regard to the agreements of the World Trade Organisation.

23 CONDUCT OF INVESTIGATIONS FOR IMPOSITION OF SPECIAL IMPORT MEASURES

1. For the purposes of imposing a special import measure under section 22 (1), the Commission shall first carry out an investigation.
2. In the conduct of the investigation of the Commission for the purpose of imposing special import measure, the Commission shall provide full opportunity to all interested parties to defend their interests.

SAFEGUARD MEASURES

24 IMPOSITION OF SAFEGUARD MEASURES

1. The Minister may, on the recommendation of the Commission, impose and apply a safeguard measure
 - a. where products are imported into the country in increased quantities in absolute or relative terms to domestic production, and
 - b. where conditions exist as to cause serious injury or threaten to cause serious injury to a domestic producer of like or directly competitive products.
2. The Minister may, on the recommendation of the Commission, impose a safeguard measure on an imported product irrespective of its source and despite the fact that the Republic may have ratified a free trade agreement or economic partnership agreement with a country with a substantial supply interest in the product under investigation.

3. Where a delay in the imposition of a safeguard measure will result in irreparable damage to a domestic producer or the domestic industry the Minister may, on the recommendation of the Commission, impose a provisional safeguard measure in the form of a tariff increase for a period of not more than two hundred days.

4. The Minister may impose a safeguard measure in accordance with subsection (3) after a preliminary determination by the Commission that there is evidence that increased imports are causing or threatening to cause serious injury to the domestic producer or domestic industry.

5. A safeguard measure imposed under this section shall be in the public interest.

25 CONDUCT OF INVESTIGATIONS FOR IMPOSITION OF SAFEGUARD MEASURES

1. The Commission shall not make a recommendation for the imposition of a safeguard measure on an imported product unless the Commission has first conducted an investigation in relation to that product.

2. For the purposes of carrying out an investigation, the Commission shall notify interested parties by

- a. publishing a notice of the investigation in the Gazette, and in a state-owned daily newspaper of nationwide circulation; and
- b. conducting a public hearing to provide the interested parties the opportunity to register their views and present evidence on the imposition of the safeguard measure.

3. The commission shall, in the conduct of investigation under this section, evaluate any factor that has a bearing on the situation of the domestic industry including

- a. the rate and amount of the increase in imported products in absolute and relative terms;
- b. the share of the domestic market ceded to the imported product; and
- c. change in the levels of
 - i. sales,
 - ii. production,
 - iii. productivity,
 - iv. capacity utilization,
 - v. profit and loss, and
 - vi. employment.

4. The Minister may, on the recommendation of the Commission, impose a safeguard measure only if there exists a causal link between the increase of imported products under investigation and the serious injury or threat of serious injury to the domestic producer or domestic industry.

5. The Commission shall in making a recommendation for the imposition of a safeguard measure take into consideration objective and verifiable evidence.

6. Subsection (4) does not apply to injury caused by factors other than increased imports.

7. The Commission shall, on the conclusion of its investigation, publish a report of its findings and reasoned conclusions reached on all issues of fact and law in the Gazette.

26 DURATION OF SAFEGUARD MEASURES

1. The Minister may, on the recommendation of the Commission, impose a safeguard measure for the period required to

- a. prevent or remedy serious injury or threat of serious injury; and

- b. facilitate the adjustment of a domestic producer who is or a domestic industry which is affected by the importation of the product.
2. A safeguard measure imposed under subsection (1) shall not exceed a period of ten years from the date of imposition.

27 NOTICE TO WORLD TRADE ORGANISATION

1. The Minister shall, on the recommendation of the Commission, give notice to the Committee on Safeguards of the World Trade Organisation when
 - a. the Commission initiates an investigation relating to serious injury or a threat of serious injury and the reasons for the investigation;
 - b. the Commission makes a finding of serious injury or threat of serious injury caused by increased imports; or
 - c. the Minister takes a decision to impose or extend a safeguard measure.
2. For purposes of subsection (1), the Minister shall supply the Committee on Safeguards with relevant information including
 - a. evidence of serious injury or a threat of serious injury caused by the increased imports;
 - b. a description of the product involved;
 - c. the proposed safeguard measure and the expected duration of the safeguard measure that will be imposed; and
 - d. a time frame for the progressive liberalisation of the safeguard measure.

COUNTERVAILING DUTIES

28 IMPOSITION OF COUNTERVAILING DUTY

1. The Commission shall impose a countervailing duty on products which are imported, where the Commission determines that
 - a. a countervailing subsidy has been or is being provided in respect of that product, and
 - b. the product is that imported is, through the effects of the subsidy, causing or threatening to cause material injury or material retardation of the establishment of a domestic industry that produces a product that is like or directly competitive to the product imported.
2. For the purposes of this Act, the subsidisation of imported goods shall not be found to be threatening to cause or cause a material injury unless the circumstances in which the subsidisation is imposed that are likely to cause injury are foreseeable and imminent.
3. Where the Commission has made a determination in accordance with subsection (1), the Commission shall impose a countervailing duty in an amount equal to the amount of the subsidy on the imported goods levied, collected or paid for.
4. The Commission shall not impose a countervailing duty unless the Commission determines that the subsidy is specific in any of the following ways:
 - a. the legislative, regulatory or administrative instrument conferring that subsidy, limits the subsidy to the particular enterprise within the jurisdiction of the authority that is granting the subsidy;
 - b. the subsidy is a prohibited subsidy;

- c. there is exclusive use of the subsidy by a limited number of enterprises;
 - d. there is a predominant use of the subsidy by a particular enterprise;
 - e. large amounts of the subsidy are granted to a limited number of enterprises disproportionately; and
 - f. the manner in which the granting authority exercises discretion demonstrates that the subsidy is not generally available.
5. The Commission shall not consider a subsidy as specific, where the conditions for eligibility and the amount of the subsidy are
- a. objective;
 - b. set out in a legislative instrument, regulatory or administrative instrument or any other public document; and
 - c. applied in a manner that does not favour or is not limited to a particular enterprise.

29 CONDUCT OF INVESTIGATIONS FOR IMPOSITIONS OF COUNTERVAILING DUTY

1. The Commission shall initiate and conduct an investigation in relation to a countervailing duty to determine the existence and effect of a subsidy where
- a. a written complaint is filed by or on behalf of a domestic producer or the domestic industry that is producing a like or directly competitive product as the imported products; or
 - b. the Commission has evidence of the existence of a subsidy, material injury and a causal link between the imports that are subsidised and the injury that is alleged.
2. The Commission shall, prior to the initiation and conduct of the investigation referred to in subsection (1), through the Minister, consult the competent authority of the country whose product is the subject matter of the investigation with a view to clarifying the situation in relation to
- a. the subsidisation alleged;
 - b. the material injury caused; and
 - c. the causal link between the product that is subsidised and material injury.

30 DURATION OF COUNTERVAILING DUTY

1. The Commission may impose a countervailing duty for the period required to counteract the subsidisation which is the cause of the material injury.
2. A countervailing duty imposed under subsection (1) shall not exceed five years from the date of imposition.

ANTIDUMPING DUTIES

31 IMPOSITION OF ANTI-DUMPING DUTY

1. The Commission shall impose an anti-dumping duty on a product that is imported where the Commission determines that
- a. the product has been dumped due to the fact that the export price of the product is less than its normal value in the exporting country, and

- b. the effect of the dumping of the product is causing or threatening to cause material injury to a domestic producer or the domestic industry producing a like or directly competitive product or is likely to retard the establishment of a domestic industry.

2. For the purposes of this Act, the dumping of a product shall not be considered to be threatening to cause or to cause a material injury unless the circumstances in which the dumping would cause injury are reasonably foreseeable and imminent.

3. Where the Commission makes a determination in accordance with subsection (1), the anti-dumping duty shall be of an amount equal to the margin of dumping being the difference between the normal value of the dumped imports and their export price.

32 CONDUCT OF INVESTIGATION FOR IMPOSITION OF ANTIDUMPING DUTY

The Commission shall initiate and conduct an investigation in relation to dumping to determine the existence, degree and effect of dumping where

- a. a written complaint is filed by or on behalf of a domestic producer or domestic industry producing a product that is like or directly competitive to the product that is imported; or
- b. the Commission has sufficient evidence of dumping, material injury and a causal link between the product that is being dumped and the alleged material injury.

33 DURATION OF ANTIDUMPING DUTY

1. The Commission shall impose an anti-dumping duty for the period required to counteract the effects of dumping which is the cause of the material injury.

2. An anti-dumping duty imposed under subsection (1) shall not exceed five years from the date of the imposition.

TARIFF PETITIONS AND CUSTOMS VALUATION OF IMPORTED GOODS

34 PETITION FOR REVIEW OF TARIFF

1. A domestic producer or a representative of the domestic industry or a labour association may submit a petition in writing to the Commission for

- a. a review of customs duty that affects the production and competitiveness of goods in relation to the domestic producer or domestic industry; or
- b. the grant of a customs duty rebate or drawback so as to enhance its competitiveness.

2. The petition shall relate to products

- a. that are imported, and
- b. that are either like or directly competitive or substitutable to the products produced by the applicant; or
- c. that are used by the applicant as inputs for the production of other products.

3. The Commission shall within seven working days of the receipt of a petition, acknowledge receipt.

4. The Commission shall on receipt of the petition.

- a. notify the Commissioner-General within seven working days;

- b. initiate and conduct an investigation for the purpose of determining the merits of the petition; and
- c. accord an interested party the opportunity to make representations before the Commission.

35 REVIEW OF TARIFF PETITION

1. For purposes of the review of a tariff petition, the Commission may require the petitioner or an interested party to provide information that relates to the substance of the petition.
2. The Commission shall
 - a. after evaluation of a petition submitted in accordance with section 34(1), approve or reject the petition; and
 - b. provide a report which sets out the basis for the decision of the Commission.
3. The Commission shall within a reasonable period after the period referred to in section 34(3) and in any event not more than fourteen working days after the Commission has taken a decision on the petition, inform the petitioner in writing of the decision of the Commission and state the reasons for the decision.

SETTLEMENT OF DISPUTES

36 POWER OF COMMISSION

The Commission shall have the power to settle a dispute arising as a result of a classification, valuation or origin determination by the Customs Divisions of the Ghana Revenue Authority or any other matter related to international trade.

37 SUBMISSION OF COMPLAINT

1. An importer or representative of an importer of goods which is the subject matter of a dispute may lodge a written complaint with the Commission.
2. The complaint lodged under subsection (1), shall be deemed to be an initial appeal against the final determination of the classification or dutiable value of the goods by the Commissioner-General.
3. The complaint shall be in the prescribed form and be accompanied with the documents and fee determined by the Commission.
4. The Commissioner-General may contest the claim contained in the complaint of the importer and shall file a response to the application within fourteen working days of receipt of the complaint in the prescribed manner by the Commission.
5. Subject to any other enactment, the settlement of a customs valuation dispute may be by procedures under the Alternative Dispute Resolution Act, 2010 (Act 798) or a hearing before the Commission.

38 INTERIM ORDER OF COMMISSION

1. The Commission may, before the determination of a dispute under section 36, make an interim order in relation to
 - a. the clearance of the goods pending the determination of the dispute;
 - b. the posting of a bond by the importer or a person entitled to clear the products;

- c. the placement of the products in a bonded warehouse pending the determination of the dispute; and
 - d. the production of documents in relation to the importation of the products.
2. Despite subsection (1), the Commission may issue any other interim order that it may consider necessary in the circumstances of the case.
3. An interim order issued in accordance with this section is enforceable against a person to whom the order is directed in accordance with section 43.

39 NOTICES AND DECISIONS OF THE COMMISSION

1. The Commission shall within fourteen working days of receipt of the complaint lodged under section 37 make a decision.
2. The Executive Secretary shall, within seven working days of the decision, inform the parties concerned in writing of the decision of the Commission and state the reasons for the decision.
3. The Commissioner may, for the purpose of correcting an obvious error or omission, vary or rescind its decision
 - a. on its own initiative; or
 - b. on application by
 - i. the importer or an authorized representative of the importer; or
 - ii. the Commissioner - General.
4. The Commission shall publish a notice of its decision and the decision of the Commission in the Gazette.

40 NON-LIABILITY FOR PAYMENT OF PENALTY

A person who imports products which are the subject matter of a dispute or any other person liable for the payment of the customs duty in relation to that product is not required to pay a penalty for lodging a complaint in relation to the decision of the Commissioner-General in respect of the value of customs duty on the products imported.

CONDUCT OF INVESTIGATIONS AND PROCEEDINGS

41 INVESTIGATIONS

1. Where a matter is required to be investigated under this Act, the Commission may conduct the investigation on
 - a. its own initiative;
 - b. receipt of an application by a party; or
 - c. receipt of a complaint lodged by the affected person.
2. Where the investigation is in response to an application or a complaint, the Commission shall limit itself to the subject matter of the application or complaint.
3. The Commission may refuse or cease to investigate the subject matter of an application or a complaint if the Commission is of the opinion that the
 - a. application or the complaint is without merit;

- b. application or complaint is not made in good faith;
 - c. evidence is not sufficient to warrant an investigation; or
 - d. applicant or complainant requests that the investigation be discontinued.
4. For the purposes of conducting an investigation, the Commission may
- a. question a person under oath or affirmation;
 - b. require a person to furnish information relevant to the investigation in the form prescribed by the Commission;
 - c. compel a person to produce documents or electrically stored information relevant to the investigation;
 - d. accept an oral submission from a person whether or not that oral submission is made on oath;
 - e. enter business premises and conduct a search under warrant on reasonable suspicion that information pertaining to an investigation is on the premises; and
 - f. subpoena a witness to appear before the Commission to give evidence or to be examined.
5. A person shall grant the Commission access to documents or electronically stored information relevant to an investigation that is in the custody of that person.
6. The Commission may seek the assistance of the court to enforce the provisions of subsection (4).

42 CONDUCT OF PROCEEDINGS

- 1. Subject to subsection (2), the Commission shall hold proceedings in public at a place and time to be determined by the Commission.
- 2. The Commission may, where circumstances so require, hold proceedings in private on request by a party.
- 3. A party to proceedings before the Commission may appear in person or have legal or other representation.
- 4. The Commission shall conduct proceedings expeditiously as the circumstances of each case require.
- 5. The Commission shall regulate proceedings to obtain full disclosure of relevant facts and to afford an opportunity for the parties concerned to present their cases.
- 6. The commission may issue summons at the initiative of the Commission or on request by a party for
 - a. the attendance of a witness; and
 - b. the production of documents or electronically stored information.
- 7. The commission shall, at the conclusion of the hearing
 - a. record its decision in writing giving reasons for that decision;
 - b. give a written notice to the parties concerned of the decision; and

c. publish a notice of the decision in the Gazette.

8. A member whose tenure of office ends in the course of a proceeding may, with the permission of the chairperson, conclude the proceeding.

9. Subsection (8) does not apply where the tenure of office of a member ends by removal from office.

43 REVIEW OF DECISION

1. Where a person is dissatisfied with a decision of the Commission under this Act, that person may apply for a judicial review of the final decision, recommendation, order or ruling of the Commission in accordance with the High Court (Civil Procedure) Rules, 2004 (C.I.47).

2. An application for judicial review of a final decision, recommendation, order or ruling of the Commission in a proceeding shall be made within six months of the date of the decision, determination, recommendation, order or ruling.

44 ENFORCEMENT OF THE DECISION OF THE COMMISSION

For the purpose of enforcing a decision, order or ruling of the Commission under this Act, the Commission may make an application to the High Court for an order to compel a person to comply with the decision, order or ruling of the Commission.

45 CEASE AND DESIST ORDER

1. The Commission may issue and serve on an importer, an order directing that importer to cease and desist from engaging in an action against which a complaint has been lodged with the Commission.

2. The Commission may vary or revoke a cease and desist order if in the opinion of the Commission it is in the public interest.

3. The Commission shall notify the importer in writing of the intention of the Commission to vary or revoke a cease or desist order.

46 IMMUNITY OF MEMBERS OF THE COMMISSION

A member of the Commission shall enjoy immunity from civil liability for actions taken or omitted to be taken in the performance of the functions of the Commission under this Act.

47 COLLABORATION WITH AUTHORITIES

1. The Commission shall collaborate with Government departments and agencies and other public authorities in the performance of the functions of the Commission under this Act.

2. Despite subsection (1), the Commission shall consult with the Minister responsible for Finance in relation to the imposition of duties under this Act.

3. For the purposes of subsection (1), a Government Department or agency shall on request made by the Commission

a. furnish the Commission with relevant documents and electronic information relating to an investigation or a hearing; and

b. assign any of the officers or employees of the Government department or agency to assist the Commission in the performance of the functions of the Commission.

4. The Customs Division of the Ghana Revenue Authority shall collect any duty imposed under this Act.

48 DISCLOSURE OF CONFIDENTIAL INFORMATION

1. A party to a proceeding before the Commission may, when submitting information to the Commission, designate that information as confidential or request the Commission to treat the information as confidential.
2. The Commission shall not disclose to a third party information submitted to the Commission under subsection (1) unless the Commission has
 - a. obtained the consent of the party that submitted the information; or
 - b. issued a business information protective order to that third party in respect of such information.
3. Information submitted under subsection (1) may be disclosed to
 - a. an officer or employee of the Commission who is directly involved in carrying out an investigation of the matter or proceeding in relation to which the information has been submitted;
 - b. an officer or employee of the Commission charged with maintaining the administrative record of the investigation or proceeding;
 - c. a party under a business information protective order; or
 - d. a court of competent jurisdiction in the context of a judicial review or application or an appeal.
4. Where there is a dispute about the confidentiality of information submitted or to be submitted to the Commission, the Commission shall determine whether
 - a. the information is by nature confidential; or
 - b. the information should be treated as confidential.
5. Where the information has already been submitted to the Commission and designated as confidential, the Commission shall not disclose the information until a decision has been taken on the confidentiality of the information.

49 REQUEST FOR INFORMATION BY COMMISSION

1. The Commission may, in writing, direct a person who imports, exports, trades or manufactures products or who has in the custody of that person information relevant to the performance of the functions of the Commission to provide the information within a specified time.
2. Where the information will result in a significant cost to the person who is responsible for providing the information, the Commission shall pay for the cost of providing the information.
3. Despite subsection (2), the Commission shall not pay for the cost of information which is in the custody of or is being provided by a government agency or a private company in which the Government of Ghana is a shareholder.
4. The Commission may, for the purpose of an investigation involving the special import measures under this Act, require
 - a. an importer;
 - b. a producer;

- c. a manufacturer; or
- d. a seller

to file with the Commission an affidavit to certify the selling price in Ghanaian currency of products imported, produced, fabricated, transformed or manufactured.

50 PUBLICATION OF DECISIONS AND NOTICES

Where the Commission is required to publish a notice or decision under this Act or the Regulations, the Commission shall publish the notice or the decision in the Gazette.

MISCELLANEOUS PROVISIONS

51 OFFENCES AND PENALTIES

1. A person who
 - a. obstructs a member of the Commission, an employee or an authorised agent of the Commission from performing a function under this Act , or
 - b. refuses to provide information in relation to a matter relevant to the functions of the Commission,

commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

2. A person who
 - a. makes a false statement or deliberately mislead the Commission, an employee or authorised agent of the Commission in the performance of the functions of the Commission;
 - b. induces a member of the Commission, an employee or an authorised agent of the Commission in the course of an investigation or proceedings, or
 - c. discloses confidential information obtained by the Commission, commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both.

3. A person who
 - a. refuses, neglects or fails to pay the amount the Commission imposes as a countervailing duty for the period that the Commission determines under section 30,
 - b. refuses, neglects or fails to pay the amount the Commission imposes as an anti-dumping duty for the period that the Commission determines under section 33, or
 - c. refuses, neglects or fails to comply with an order or decision made by the Commission other than a decision made under paragraphs (a) and (b),

commits an offence and is liable on summary conviction to a fine of ten per cent of the duty payable and for each day during which the offence continues, a further fine of one per cent interest on the duty payable at the prevailing bank rate.

52 REGULATIONS

The Minister may, in consultation with the Commission, by legislative instrument, make Regulations to

- a. prescribe the manner for the imposition of
 - i. safeguard measures;
 - ii. countervailing duties; and
 - iii. anti-dumping duties;
- b. prescribe the procedure for the review of tariff petitions;
- c. regulate the conduct of the Commissioner investigations;
- d. regulate the procedures of the Commission;
- e. prescribe procedures for the submission of complaints; and
- f. provide for any other matter for the effective implementation of this Act.

53 MODIFICATION

The provisions of an enactment of relevance to this Act in existence before the commencement of this Act shall have effect subject to the modifications that are necessary to give effect to this Act and to the extent that a provision of that enactment is inconsistent with this Act, the provisions of this Act shall prevail.

54 INTERPRETATION

In this Act, unless the context otherwise requires,

"business information protection order" means an order by the Commission to the recipient of confidential information to restrain the recipient from disclosure of the confidential information;

"Commission" means the Ghana International Trade Commission established under section 1;

"Commissioner-General" means the person appointed under section 13 of the Ghana Revenue Authority Act, 2009 (Act 791);

"Committee on Safeguards" means World Trade Organisation Committee on Safeguards established under article 13 of the World Trade Organisation Agreement on Safeguards;

"countervailing subsidy" means a subsidy against which a countervailing duty may be imposed;

"dispute" means a disagreement arising out of a classification, valuation or origin determination by the Customs Division of the Ghana Revenue Authority or any other matter related to international trade;

"domestic industry" includes

- a. domestic producers as a whole of like products;
- b. domestic producers whose collective production of like products constitutes a major proportion of the total domestic production of the like products; and
- c. the category of domestic producers who are not connected to an exporter or importer of dumped or subsidised products;

"dumping" means the introduction of a product into the commerce of another country at less than its normal product value in the ordinary course of trade, for the like product when destined for consumption in the exporting country;

"duty" includes a customs duty and provisional duty imposed under this Act;

"enterprise" means an industry, project, undertaking or economic activity or an expansion of that industry, undertaking, project or economic activity or any part of that industry undertaking, project or economic activity;

"export price" means the sales price for goods adjusted by deduction of

- a. the costs charges and expenses incurred in preparing the goods for shipment to Ghana that are additional to those costs, charges and expenses generally incurred on the sale of like goods for use in the country of export; or
- b. a duty or tax paid by an exporter and other costs, charges or expenses for the transportation of the goods, or for shipment from the country of export to Ghana;

"free trade agreement" means any agreement entered into between two or more States for the purposes of liberalising trade;

"importer" means the person who brings products into Ghana;

"injury" includes a material or serious injury to the domestic industry;

"like product" means products identical in all respects or product similar in characteristics;

"materials injury" means harm which is consequential, material or important;

"Minister" means the Minister responsible for Trade;

"product" includes goods;

"prohibited subsidy" means a subsidy that is granted based on

- a. export performance; or
- b. the use of domestic over a product or service that is imported;

"safeguard measures" include

- a. measures taken to protect a specific industry from an unexpected build up of imports; or
- b. measures to remedy serious injury to a domestic industry and facilitate adjustment;

"serious injury" means a significant overall impairment in the position of a domestic firm;

"special import measures" includes

- a. countervailing duties;
- b. anti-dumping duties;
- c. safeguard measures: and
- d. tariff adjustments;

"subsidisation" means the process of providing subsidy;

"subsidy" means the financial contribution by a Government of a country other than Ghana which transfers a benefit to a person engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of products; and

"unfair trade practice" means a business practice that distorts trade and gives an unfair advantage to an enterprise in the market place.

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