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Page: 1/4

**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 AGREEMENTS**

REPLIES TO QUESTIONS POSED BY THE UNITED STATES¹ REGARDING
THE NOTIFICATION OF THE UNITED ARAB EMIRATES²

The following communication, dated 9 October 2019, is being circulated at the request of the Delegation of the United Arab Emirates.

The United Arab Emirates thanks the United States for their questions regarding the notification of *Council of Ministers Decision No. (8) for the Year 2018* (hereinafter *Decision No. (8)*), and provides the following answers:

Question 1

Section II, Article 8 of *Decision No. (8)* discusses the records that the investigating authority will maintain during the course of a proceeding. Please clarify the following:

- a. **Will only those parties that registered as interested parties to the investigation have access to the non-confidential record or will those records be publicly available for examination?**
- b. **How will parties access the non-confidential record for purposes of copying and review?**
- c. **Will any parties, with the exception of the investigating authority, have access to documents in the confidential record of a case? If so, please explain which parties will have access, the process to grant access, and the requirements imposed to ensure the safekeeping of the confidential records by parties.**
- d. **Will the investigating authority maintain an index of all case file records for both the non-confidential and confidential records for interested parties and/or the public to review?**

Reply

- a. Only those parties that registered as interested parties to the investigation have access to the non-confidential record.
- b. Interested parties to the investigation who have access to the non-confidential record can review the record and take notes but without copying.
- c. No one of the parties, with the exception of the investigating authority, has access to documents in the confidential record of a case.

¹ G/ADP/Q1/ARE/3 - G/SCM/Q1/ARE/3 - G/SG/Q1/ARE/3.

² G/ADP/N/1/ARE/2/Suppl.1 - G/SCM/N/1/ARE/2/Suppl.1 - G/SG/N/1/ARE/2/Suppl.1 (dated 5 October 2018).

- d. The investigating authority maintains an index of all case file records for both the non-confidential and confidential records.

Question 2

Section II, Article 12, paragraph 1 indicates that interested parties are provided no more than 40 days to provide a response to the initial questionnaire issued in an antidumping or countervailing duty. The Article 6.1.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement) and Article 12.1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), specify that parties shall be given at least 30 days to provide a response to the initial questionnaire, but do not establish a limit or cap on the amount of additional time that may be granted by the administering authority for an interested party to provide a response to the questionnaire. The 40 days noted in Article 12 of *Decision No. (8)* seems to indicate that the administering authority's discretion to provide an extension is limited to 10 additional days. Please clarify whether this is the case or may the administering authority grant parties an extension of time beyond the 40-day time limit noted above, if good cause is shown by the requesting party.

Reply

The administering Authority can grant an extension of ten (10) days beyond the 40-day time limit in accordance with Article 12, Section II, paragraph 1 & 2 of the *Decision No (8)*.

The administering authority grants parties an extension of time beyond the 40-day time limit noted above, if good cause is shown by the requesting party.

Question 3

Section II, Article 14 states that when "indicators" show that the "trend in imports of a product threatens to cause injury to the Domestic Industry, imports of that product may be subject as appropriate to a temporary surveillance procedure ... in accordance with the terms and procedures regulated in a Statutory Decision issued by the Council of Ministers".

- a. **Has the United Arab Emirates Council of Ministers issued a Statutory Decision for carrying out such surveillance, and if so, please indicate where the United Arab Emirates has made a copy available?**
- b. **Please indicate whether the United Arab Emirates has ever undertaken such surveillance under this text or predecessor text, and the outcome.**
- c. **How does the United Arab Emirates define the terms "trend" and "injury" and what time period and what type of information would the United Arab Emirates consider (or has considered in the past) in deciding whether there is a "trend" and "injury"?**
- d. **If the United Arab Emirates finds that indicators show a trend in imports threatens to cause injury, what possible actions could the UAE take after having done so?**

Reply

- a. The United Arab Emirates did not issue the Council of Ministers Statutory Decision for carrying out the surveillance procedure.
- b. The United Arab Emirates has never undertaken the surveillance procedure under this text or a predecessor text.
- c. As clarified in points (a) and (b) above, the United Arab Emirates did not issue the Statutory Decision to carry out the surveillance procedure and never undertaken such proceeding. Article 14 of the *Decision No (8)*. stated that such surveillance should be "carried out in accordance with the terms and procedures regulated in a Statutory Decision issued by the Council of Ministers based on the Minister's proposal". It should be noted in this respect that no Ministerial proposal has been done so far for this purpose and therefore the terms "trend" and "injury" would be elaborated in the Statutory Decision.

- d. The matter raised in this question will be dealt with in the Statutory Decision, which as explained above not issued yet and there is no proposal that has been done so far for this purpose. Nevertheless, it is important to note that the main purpose of the surveillance procedure is to collect import data and not envisaged to constitute a standalone action on imports. It is thereby important to clarify in this respect that every possible action on imports is taken in accordance with the conditions and procedures related to safeguards, countervailing or antidumping as prescribed in the *Decision No (8)*.

Question 4

Section II, Article 18, paragraph 2 indicates that the investigating authority may conduct on-the-spot verifications during the course of a trade remedy investigation. Please clarify whether the investigating authority will provide an agenda or list of the information to be verified to the concerned company in advance of the on-the-spot verification and, if so, how far in advance that information will be issued to the concerned company.

Reply

The investigating authority will provide an agenda and the nature of the information and documents to be verified to the concerned company in advance of the on-the-spot verification, without precluding any request for further information during the visit that may arise from the documentary review itself and the conduct of the visit.

The *Decision No (8)* does not lay any obligation on how far in advance that information will be issued to the concerned company before the verification visit. However, it has been the practice of the Investigating Authority to notify the concerned company before a period not exceeding one month.

Question 5

Please clarify the differences between Section II, Article 25, paragraph 1 which states, "Notifications, correspondences, queries and any other communications should be sent to known interested parties or their assigned representatives by registered mail which confirms delivery to the interested parties" and Section II, Article 25, paragraph 2 which states, "Notifications to the known interested parties in foreign countries should be made through their diplomatic representatives or authorized consulates in the Country". Please confirm that the investigating authority will directly inform all interested parties of the essential facts under consideration and all other information related to an investigation relevant to the parties' defense of their interests, including those based in foreign countries.

Reply

In accordance with the provisions of the *Decision No (8)*, we confirm that the investigating authority will directly inform all interested parties of the essential facts under consideration and all other information related to an investigation relevant to the parties' defense of their interests, including those based in foreign countries.

Besides, in accordance with Article 20, paragraph 3 of the *Decision No (8)*, the investigating Authority will provide all interested parties, including those based in foreign countries, the opportunity to submit their comments regarding the essential facts under consideration or any published findings during the investigation within a period not exceeding fifteen (15) days of the disclosure of such reports.

Question 6

Section II, Article 72, paragraph 2 states that when determining a threat of serious injury, one of the factors to be considered is the "rate of increase of imports into the domestic market indicating the likelihood of substantially increased imports". Please indicate how this sentence is consistent with the requirement in Article 2.1 of the WTO Agreement on Safeguards – that a Member find that a product "is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such

conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products".

Reply

There is no inconsistency between the provisions in Article 72, paragraph 2 that states that when determining a threat of serious injury, one of the factors to be considered is the "rate of increase of imports into the domestic market indicating the likelihood of substantially increased imports". And the requirement in Article 2.1 of the WTO Agreement on Safeguards – that a Member find that a product "is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products".

It is important to emphasize that increased imports is an independent condition which shall be determined in absolute terms or in terms of imports relative to production and the increase has to be of such a nature, expressed in the WTO Agreement on Safeguards as "under such conditions" as to cause or threaten to cause serious injury to the domestic industry. Thus, the general requirement as per Article 2.1 of the WTO Agreement on Safeguards to examine the increased quantities was embedded in several Articles of the *Decision No (8)*, inter alia, Articles 71, paragraph 1, Article 72, paragraph 2, A, Article 73, Article 75, paragraph 1, which suggest that in all situations imports must have increased into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

However, paragraph 2 of Article 72 is not an independent condition pertaining to the examination of increase of imports but rather forms part of the overall threat of serious injury to the domestic industry analysis. In short, paragraph 2 relating to the "rate of increase of imports into the domestic market indicating the likelihood of substantially increased imports" is listed among the several other factors to examine the threat of serious injury to the domestic industry and not to examine the standalone condition of increased imports.

We recall in this respect that Article 71, paragraph 1 of the *Decision No (8)* clearly sets forth the same general obligation as prescribed in Article 2.1 of the WTO Agreement on Safeguards that "A safeguard measure may be applied to a product imported into the Country, irrespective of its source, if it is determined that such product is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the Domestic Industry that produces like or directly competitive products".

Therefore, in absolutely no case a safeguard measure may be imposed in the absence of an increase in imports, as emphasized above.
