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

Original: Spanish

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

REPLIES TO QUESTIONS POSED BY THE UNITED STATES¹
REGARDING THE NOTIFICATION OF COSTA RICA²

The following communication, dated 27 October 2020, is being circulated at the request of the delegation of Costa Rica.

Question 1

Under Chapter III Article 6, the rules of procedure state that "the following practices shall be considered to constitute circumvention, where the intention to evade an existing anti-dumping, countervailing, or safeguard measure is demonstrated;" however, the law does not provide a practice or other guidance for establishing "intent" to evade duties. Please explain whether the investigating authority must separately determine whether there is intent to evade duties when one of the listed circumvention practices is found to exist or if the practices listed in Article 6 are deemed to demonstrate intent without further evidence. If the investigating authority is required to make an affirmative finding with regard to intent to evade an existing measure, please explain the criteria by which the investigating authority makes this determination.

Replies:

In the context of the rules under review, the investigating authority, by means of an investigatory process, shall determine whether there is intent or not, on the part of the economic agent or natural person, to evade the duties applied by Costa Rica as regards trade defence, through one or more of the practices regulated under Article 6. The investigation shall be initiated at the request of the interested production sector or interested natural or legal person (Article 7 of the rules). The request must be based on objective evidence of the facts alleged (Article 8 and 9 of the rules). Once the investigation has been initiated, the investigating authority shall request evidence from the interested parties to determine the merits of the case. Evidence shall be verified by the investigating authority by means of on-the-spot visits. Once this verification has taken place, the investigating authority shall proceed to examine and analyse such evidence to reach a final determination, whether affirmative or negative, on the request submitted. The foregoing is pursuant to the provisions of Articles 10, 14 and 15 of the rules.

¹ G/ADP/Q1/CRI/15 - G/SCM/Q1/CRI/15 - G/SG/Q1/CRI/9.

² G/ADP/N/1/CRI/3/Suppl.1 - G/SCM/N/1/CRI/4/Suppl.1 - G/SG/N/1/CRI/4/Suppl.1 (dated 29 November 2019). For the sake of efficiency, the United States suggests that committee review for these questions be conducted in the Committee on Anti-Dumping Practices.

In each specific case, the investigating authority should make a determination of circumvention of the measure based on objective, clear and sufficient evidence, in accordance with the provisions of Articles 5 and 9 of the rules.

"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."*

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

(...)

(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.

(...)"

Question 2

Chapter III Article 6 subclauses (a)-(d) refers to "a product like the product subject to the trade defence measure." Is "a product like the product subject to the trade defence measure" equivalent for the purposes of this law to a "like product" as defined in Chapter II General Definitions, Abbreviations, and Acronyms, or does it have some different meaning?

Replies:

Yes, a product defined as a "product subject to the trade defence measure" refers to a "like product". In the case of safeguard measures, it also refers to a directly competitive product.

Question 3

Under Chapter III Article 6(d), the importation of slightly modified products so that they are "to be brought 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" is considered circumvention. Are there guidelines or criteria by which the investigating authority determines whether differences alter the "essential characteristics" of a product and its end use? How does the investigating authority determine or verify the end use of a product, given that many products have multiple uses or applications and the end use may not be dictated by physical characteristics or properties?

Replies:

It is for the investigating authority to determine, on a case-by-case basis, whether the differences observed in the imported product alter the "essential characteristics" of the product and its end use for the application of the provisions of Article 6(d) of the rules. Determinations are based on evidence provided by the parties, evidence obtained by the investigating authority, on-the-spot verifications or laboratory analysis. All the foregoing derives from the powers of investigation granted to the investigating authority by Article 26 of the rules and other relevant regulations.

Question 4

Under Chapter III Article 6(b), please provide more detail on how the importation of a product "via third countries" would be determined to be circumvention. How will a determination of origin be made for purposes of this provision? Will the investigating authority trace the origin of the products?

Replies:

Yes, in order to determine whether the behaviour under investigation is in line with the provisions of Article 6(b) of the rules under review, the investigating authority would carry out a traceability procedure of the product under investigation in collaboration with the General Directorate of Customs of the Ministry of Finance, pursuant to Article 26 of the rules in question.

Question 5

Chapter III Article 6(h) acts as a catchall for any other "circumvention behaviour which is shown to undermine the remedial effects of the trade defence measures imposed". Please explain how it is determined that a behaviour acts to "undermine" an existing trade measure and explain how this determination would be used to make a circumvention determination.

Replies:

As stipulated under Article 6(h), there may be other situations, which are not included in the above list, that might be considered as undermining the remedial effects of the trade defence measures imposed. Such situations should be evaluated on a case-by-case basis, taking into account the information provided by the requesting production sector to the investigating authority. This information should be verified in accordance with the law. Once the investigation has been initiated, all parties will be given an opportunity to submit comments and relevant evidence. By means of an analysis of any type of relevant evidence, a determination will be made as to whether an alleged practice may or may not undermine a trade defence duty imposed by Costa Rica.

Question 6

Under Chapter IV "Admissibility of Request to Initiate Anti-Circumvention Investigation", there is no reference to public notification of a request to investigate circumvention. Please explain how and through what means the public is notified of a request for an investigation into circumvention of a measure. Furthermore, will interested parties be granted an opportunity to obtain a non-confidential version of the request for an anti-circumvention investigation prior to any decision to initiate? Please explain the opportunities to comment on the sufficiency of a request to investigate alleged circumvention prior to initiation.

Replies:

There is no prior publication or access to information before the formal opening of an anti-circumvention investigation. The rules under review follow the guidelines and procedural principles of the WTO Agreements and Central American regulations on anti-dumping, countervailing and safeguard measures. Once an investigation has been initiated, a copy of the request to initiate an investigation is attached to a copy of the resolution regarding initiation. Under Article 11 of the rules, interested parties may appeal, *inter alia*, the resolution regarding the initiation of an investigation.

Question 7

Under Chapter IV Article 10, the investigating authority must notify all interested parties named in a request for a circumvention investigation of a decision to initiate. How will this be done? Will only the parties named in the request be subject to a circumvention investigation or will other interested parties be identified or have an opportunity to participate? Please explain any registration requirements for parties to retain their rights

as interested parties in the investigation. Will the governments of the exporting company(ies) be notified of initiation even if they are not explicitly listed in the request?

Replies:

The resolution regarding the initiation of the anti-circumvention investigation will be published in the Official Journal of the Costa Rican Government, *La Gaceta*, under existing procedural rules on trade defence and as Article 27 of the rules establishes that the provisions of public and private law may be applied on a supplementary basis to cases not provided for in these rules. Also, the resolution regarding the initiation of an anti-circumvention investigation will be notified to the requesting production sector, the importers and exporters of the product in question and the government of origin of the exporting companies (these are considered interested parties per se under Article 14 of the rules).

Moreover, in the resolution regarding initiation, natural or legal persons demonstrating a direct interest in the procedure and meeting the necessary requirements shall be granted a period of eight working days to be considered as interested parties.

In order for parties to retain their rights as parties to the procedure, they should be accredited as such in the case file submitted in each specific case, in accordance with Costa Rican law.

Question 8

Will the Technical Report discussed under Chapter V Article 20 be released publicly or distributed to interested parties? If so, will there be an opportunity for interested parties to comment on the technical report before the decision of the Minister of the Economy, Industry and Trade?

Replies:

The technical report will not be available to interested parties until the Minister has made a final decision on the request and issued a final decision on the case. At that point, the technical report will be added to the case file, to which all parties have access. Notwithstanding the above, parties will have the opportunity to submit comments on the report on essential facts, pursuant to Article 18 of the rules under review.

Question 9

Under Chapter V Article 21, the Minister of the Economy, Industry and Trade has the authority to deviate from the technical report if the decision is justified technically. Beyond this required justification of any deviation, are there any other limitations on the Minister's power to deviate from the technical report? Does the Minister have the authority to broaden the finding to include other exporters or products? Does the Minister have any authority to change the form of remedy by which the circumvention measure is applied?

Replies:

The Minister must reach a decision on the basis of the case file and the technical report prepared by the investigating authority, concluding its investigation. Also, pursuant to Article 19 of the rules under review and Costa Rica's General Public Administration Law, the hearing, which takes place as part of the investigation, concludes the evidentiary period.

Question 10

If an interested party does not comply with a request for information, or if their reply is incomplete or unsatisfactory, what is the investigating authority authorized to do as a response to this lack of cooperation or perceived lack of cooperation?

Replies:

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information for determining the merits of the case within the period indicated by the investigating authority, the administration shall make a decision on the basis of the facts available. This is due to the fact that it would be applying on a supplementary basis, pursuant to Article 27 of the rules under review, the provisions of Article 6.8 of the Anti-Dumping Agreement and Article 12.7 of the Agreement on Subsidies and Countervailing Measures.
