



30 November 2020

(20-8630)

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**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 QUESTIONS¹ POSED BY THE UNITED STATES REGARDING
THE NOTIFICATION OF GHANA²

The following communication, dated 27 November 2020, is being circulated at the request of the delegation of Ghana.

Question 1

Section 2, Objects of the Commission, paragraph 2 of the International Trade Act states "... the Commission shall be guided by the treaty provisions of the World Trade Organisation and the general principles of international trade law." Please clarify what legal authority takes precedence in the event of a conflict between the provisions in the International Trade Act and an applicable WTO agreement.

Reply:

Since the membership of Ghana to WTO in 1995, she has embarked on processes to internalize the WTO rules and regulations. Moreover, as a contracting party, Ghana has always been mindful of the universally acknowledged principle of *pacta sunt servanda* by endeavoring to honor all her commitments to the WTO. The establishment of the Ghana International Trade Commission Act (Act 926) – hereinafter "the Act"- is a further step to provide for the regulation of the international trade in Ghana in conformity with the WTO rules and regulations as expressly stated in Sec.2. (1a) of the GITC Act. More specifically, the provisions of the GITC Act does not derogate from that of the WTO. Since the GITC Act is the domestic implementing regulation of the WTO agreement, it is therefore compliant with the provision of the WTO agreement and such conflicts are unlikely to arise.

Question 2

Section 22, Imposition of Special Import Measures, paragraph 4(c) of the International Trade Act states that the Commission shall have the power to "review its own findings and determination relating to the special import measure." Please explain further what types of reviews (e.g., annual reviews, clerical or ministerial errors, methodology or practice, mid-term or administrative reviews, etc.) the Commission would

¹ G/ADP/Q1/GHA/1 - G/SCM/Q1/GHA/1 - G/SG/Q1/GHA/1.

² G/ADP/N/1/GHA/2 - G/SCM/N/1/GHA/2 - G/SG/N/1/GHA/2 (dated 10 December 2019).

undertake. Also, how does this power of review work in conjunction with Section 43, Review of Decisions?

Reply:

For the purpose of clarity, we state that Sec. 22. (1) of the Act describes Special Import measures to include: safeguard measures, anti-dumping duties, countervailing duties, and tariff adjustment measures.

The Commission's powers to review its own findings and determination as stated in Sec. 22 (4c) of the Act is in accordance with Article 11 of the WTO Anti-Dumping Agreement; Article 21 of the agreement on Subsidies and Countervailing measures as well as the various applicable WTO Agreements. The Commission will employ empirical methodology and practice to conduct periodic review of its findings and determination. A periodic review by the Commission may involve changes in methodology to assess the impact of the imposition of the special import measures on whether the identified injuries have been counteracted or remedied. Sec. 22 (5) of the Act requires the Commission to exercise these powers with regard to the agreements of the WTO.

The power of review, as explained in Section 22, can be differentiated from Review of Decisions as expressed in Section 43 of the GITC Act. Section 43, of the Act does not derogate from, say, Article 13 of the Anti-Dumping Agreement, which mandates independent judicial arbitral or administrative tribunals to be maintained for review of final determination by investigating authorities such as GITC.

Section 43 of the Act affords dissatisfied interested parties the opportunity to apply for a judicial review of the final decision, recommendation, order or ruling of the Commission. Such action is commenced at a court of competent jurisdiction in accordance with the High Court (Civil Procedure) Rules, 2004 (Constitutional Instrument 47), and can be pursued within six (6) months after the Commission's ruling. Based on procedural improprieties and on such grounds as judicial review would be established.

Question 3

With regard to Section 25, Conduct of Investigations for Imposition of Safeguard Measures, paragraph 2(b) of the International Trade Act, please clarify what opportunities, outside of public hearings, that interested parties to a safeguard proceeding have to present evidence, facts, and statements or submissions for consideration by the Commission? Will the Commission issue a questionnaire to interested parties?

Reply:

The Commission is committed to ensure fairness, transparency and objectivity in all its endeavors. Parties with substantial interest in a petition are notified of the conduct of investigation by the Commission through a public notice in the Gazette, and in a newspaper of nationwide circulation, as stipulated in Section 25 of the Act.

After the said publication, interested parties are allowed to submit views and facts, within a defined timeline, for consideration by the Commission. Questionnaires or forms may be supplied to interested parties, and in line with Sec. 23 (2) of the Act, the Commission provides the full opportunity to all interested parties to defend their interests.

Question 4

Please clarify whether a summary of the meetings with parties discussed in Section 42, Conduct of Proceedings, paragraph 2 of the International Trade Act will be placed on the public case file for interested parties to access.

Reply:

Section 42, paragraph 2, of the Act gives the Commission the discretion to grant a party's request to hold proceedings in private. The rationale for this provision is to protect the sanctity of confidential information and trade secrets of a party.

In this regard, Section 48 of the Act empowers the Commission to decide on whether or not an information provided in private constitutes confidential information and are treated as such and not placed in a public case file.

Interested parties may however through Section 48 of the Act, on Disclosure of confidential information, request for such confidential information under some circumstances. This section demands that the Commission disclose such information to a party, under a business information protective order or by an order of a court of competent jurisdiction in the context of judicial review.

Question 5

Please clarify whether there will be a public case file for antidumping, countervailing duty, and safeguard proceedings, who will have access to the public case file (e.g., only those entities registered as interested parties to the proceeding or anyone interested in the proceeding, including the general public), and how those with access will have access to the public case file (e.g., in-person or electronic).

Reply:

We repeat our comments stated under question 4. Since the Commission is a quasi-judicial body, it will keep a public case file for all its proceedings. All non-confidential documents, minutes, and reports will be made available, upon request, to interested parties. The general public can access, relevant documents at the discretion of the Commission, either electronically or manually.

Question 6

Please clarify whether entities wishing to submit views, attend hearings, or otherwise participate in a proceeding under the International Trade Act will be required to register as an interested party to the proceeding. If parties will be required to register, please explain the registration process, including any associated deadlines or timeframes.

Reply:

The Commission will, after it has decided to initiate an investigation on a petition, issue a public notice of the decision to investigate in a Gazette and a newspaper of nationwide circulation. All persons and entities which demonstrate a level of interest in the matter under investigation will be allowed to state and defend their interests as interested parties. In upholding fairness and transparency, parties will be required to be registered as interested parties to a petition through a written submission or online process.

Considering an investigation of Anti-Dumping, in line with Article 12.1.1 of the WTO Anti-Dumping Agreement and Regulation 14 (2) (f) of Anti-Dumping Regulations, L.I. 2380, the public notice should contain time-limits allowed to interested parties to present a case. This Commission may also by Regulation 14 (5) issue a notice and call for information from interested parties. Such entities so defined would be required to furnish the Commission with their views in writing within thirty (30) days, subject to extension for good cause shown.

In an investigation requiring safeguard measures, an interested party will within twenty-one (21) days from the date of notification of an investigation, submit comments on the

petition to the Commission. The Commission may grant an extension of time for the submission of comments. In investigations involving subsidization, an interested party calling for information may be given thirty (30) days to respond to a questionnaire.
