



21 September 2021

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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 FOLLOW-UP QUESTIONS¹ POSED BY
THE UNITED STATES REGARDING THE NOTIFICATION OF KENYA²**

The following communication dated and received on 20 September 2021, is being circulated at the request of the delegation of Kenya.

Question 1

In its response to question 4, Kenya states that all interested parties will have access to the case file, except as may be protected by the confidentiality rule. Kenya further explains that parties interested in accessing the case file will need to make a request in writing to the Kenya Trade Remedies Agency ("Agency"). Please clarify whether members of the general public can submit a request to access a trade remedy case file or will access to the case files be limited to interested parties that have registered to participate in the proceeding. Kenya also states that a case file will normally be closed after investigation, but that further review may be undertaken upon application by an interested party who provided additional information that was not available before closure. Please clarify whether by this statement Kenya is referring to the reexamination by the investigating authority of a closed case file or the ability of interested parties and the general public to access the case file after it has closed. If the former, please clarify whether interested parties and the general public will be able to access closed case files.

Reply:

A Member of the General Public who requests in writing to the Kenya Trade Remedy Agency to access a Trade Remedy case file may be allowed access on a case by case basis in accordance with Kenya's Laws on Access to information. The access to information is not exclusive to those who have registered to participate in the proceeding. However, the information given shall not include that which has been classified as Confidential or restricted.

According to Kenya's law a case file will normally be closed after investigation. However, further review may be undertaken upon application by an interested party who provides additional information that was not available before closure. In this case, the additional information is provided before closure. The issue of re-examination will therefore not arise.

Question 2

In its response to question 5, Kenya states that, "the Agency shall carry out its background check and verification as provided for in the law before making a decision to

¹ G/ADP/Q1/KEN/6 - G/SCM/Q1/KEN/6 - G/SG/Q1/KEN/5 and G/ADP/Q1/KEN/6/Corr.1 - G/SCM/Q1/KEN/6/Corr.1 - G/SG/Q1/KEN/5/Corr.1.

² G/ADP/N/1/KEN/3 - G/SCM/N/1/KEN/3 - G/SG/N/1/KEN/2.

initiate an investigation." Please clarify whether Kenya intends to conduct an on-site verification of the data provided in the application by the petitioner prior to deciding whether to initiate a trade remedy investigation.

Reply:

Yes. Kenya may conduct an on-site verification of the data provided in the application by the petitioner prior to deciding to initiate a trade remedy investigation if the information provided by the data is insufficient to make a definitive decision.

Question 3

In its response to question 10, Kenya states that its examination of whether the application of lesser duty is appropriate shall be done only in instances where exporters representing a significant percentage of the total trade value request that provisional measures be applied for a period of nine months, instead of six months. Is this understanding correct? If lesser duty is not applied, how long will provisional duties remain in effect? Will Kenya ever examine whether the application of lesser duty is appropriate on its own accord (i.e., without a request to do so by exporters)?

Reply:

In response to Question 10, Kenya stated that its examination of whether the application of lesser duty is appropriate shall be done only in instances where exporters representing a significant percentage of the total trade value request that provisional measures be applied for a period of nine months, instead of six months. **This understanding is correct.**

If lesser duty is not applied, provisional duties will remain in effect for six (6) months with a possibility of extension as may be allowed by the Anti-Dumping Agreement. Kenya will examine whether the application of lesser duty is appropriate on its own accord (i.e., without a request to do so by exporters) in line with Section 21 (1)(b) of the Second Schedule of the Kenya Trade Remedies Law and Article 7.4 of the Anti-Dumping Agreement.
