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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
ARTICLE 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

**REPLY TO QUESTIONS¹ POSED BY THE UNITED STATES
REGARDING THE NOTIFICATION OF CAMBODIA²**

The following communication, dated 21 June 2019, is being circulated at the request of the Delegation of Cambodia.

Question 1

Article 3 states, "{t}his law shall be applied to Dumping, Subsidies and Countervailing Measures, and Safeguards with regard to trade in Cambodia in conformity with the relevant Agreements of the World Trade Organization". In instances of potential conflict between the Law and the above-mentioned WTO Agreements which will take precedence when Cambodia conducts its proceedings?

Answer:

Cambodian Trade Remedy Law was drafted based on the WTO model law. In case of conflict between this Law and the WTO Agreements, the WTO provisions would prevail.

Question 2

Several references are made throughout the Law on Trade Remedies that further descriptions or procedures will be provided in a Sub-Decree. Has Cambodia already issued this Sub-Decree or is this still a work in progress? If the Sub-Decree has been issued, when will Cambodia notify the Sub-Decree to the relevant WTO Committees? If the Sub-Decree is not yet complete, please indicate the status of the development of the Sub-Decree and the expected process and timeline for its development and adoption.

Answer:

The drafting process is still in progress and consultations with relevant agencies and stakeholders. Consultations and drafting process are expected to be completed before the next trade policy review.

Question 3

Article 16(B) provides a list of factors that the Committee should consider in a threat of material injury analysis in an antidumping investigation. Please explain whether any one of these factors can give decisive guidance on whether there is a threat to the industry, or whether "the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur", as provided in Article 3.7 of the AD Agreement. Please also explain whether

¹ G/ADP/Q1/KHM/1 - G/SCM/Q1/KHM/1 - G/SG/Q1/KHM/1

² G/ADP/N/1/KHM/2 - G/SCM/N/1/KHM/2 - G/SG/N/1/KHM/2

the factors enumerated in the Law constitute an exhaustive list, given that Article 3.7 indicates that an authority may consider additional factors.

Answer:

To clarify, no one of these factors by itself can give decisive guidance. The totality of these factors must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur. The factors enumerated in the law are a non-exhaustive list.

Question 4

Paragraph A of Article 18 notes that in special circumstances, the National Committee on Trade Remedies may itself initiate an investigation. Please clarify that the Committee will only proceed "if they have sufficient evidence of dumping, injury and a causal link", as required under Article 5.6 of the AD Agreement, prior to initiating an investigation. Furthermore, please confirm that, with due allowance for the protection of confidential information, interested parties to the investigation will be able to review the underlying basis and facts used by the National Committee on Trade Remedies to initiate the investigation.

Answer:

Yes, the Committee will only proceed "if they have sufficient evidence of dumping, injury and a causal link", as, required under Article 5.6 of the AD Agreement, to justify the initiation of an investigation.

According to the Article 18 of the Law, the Committee shall not disclose any confidential information if the party submitting such information requests so. For non-confidential information, the Committee may furnish to the interest parties to the investigation upon request. The detail procedures will be determined in the Sub-decree.

Question 5

Paragraph D of Article 18 states, "{t}he National Committee on Trade Remedies shall maintain a public file containing non-confidential information obtained during the investigation". Please confirm that the public file will contain sufficiently detailed summaries of the confidential information to permit parties "a reasonable understanding of the substance of the information submitted in confidence" as required under Article 6.5.1 of the WTO AD Agreement.

In addition, please explain how interested parties will access the public file.

Finally, Article 18D does not specifically address that all interested parties, whenever practicable, will have timely opportunity to see all evidence relevant to the presentation of their cases. How does Cambodia implement the requirements of Article 6.4 of the AD Agreement?

Answer:

The points raised in this question will be dealt with in the implementing sub-decree.

Question 6

Article 32 states, "{w}hen conducting safeguards investigations, the National Committee on Trade Remedies shall apply the principles and procedures contained in Article 18 of this Law". However, Article 18 of the Law on Trade Remedies describes the procedures for initiating and conducting antidumping investigations. Since antidumping and safeguards measures are different remedies subject to distinct WTO rules concerning their adoption and implementation, please clarify which of the principles and procedures described in Article 18 are also applicable to safeguards investigations.

Answer:

The principles and procedures described in Article 18 which also applicable to safeguard investigation are; 1) An investigation may be initiated at the request of domestic industry or by the committee itself and 2) the committee shall establish procedures for initiation of an investigation. For the detailed principles and procedures of each remedy will be further set out in Sub-Decree.

Question 7

Paragraph C of Article 32, which concerns provisional safeguard measures, omits the requirement in Article 6 of the Safeguards Agreement that such measures may be applied only "in critical circumstances" where delay would cause damage that would be difficult to repair. It also substitutes the term "sufficient evidence" for the term "clear evidence" in the English text of Article 6 of the Safeguards Agreement. Please explain these differences.

Answer:

For greater certainty, the provisional safeguard measure may be applied by the Committee only in critical circumstances where delay would cause damage that would be difficult to repair.

For clarification, the term "Sufficient evidence" in paragraph C of Article 32 of the Law and the term "Clear evidence" in Article 6 of the Safeguards Agreement should have the same interpretation in Khmer language.

Question 8

Paragraph C of Article 33 states that Cambodia "shall immediately notify the World Trade Organization if it is determined that increased imports have caused or threaten to cause serious injury to the Cambodian industry". Please indicate whether Cambodia, in its notification to the Safeguards Committee, also plans to provide the information required by Article 12.2 of the Safeguards Agreement.

Answer:

In accordance with notification under Para C of article 33 of Cambodian Law, Cambodia will include information required by WTO Agreement on Safeguard.

Question 9

Paragraph A of Article 34 and paragraph A of Article 36 state that the National Committee on Trade Remedies may apply a remedy in the form of a quantitative restriction, but makes no reference to the requirements and limitations regarding such measures in Article 5 of the Safeguards Agreement. Please explain how the National Committee would apply such a measure consistent with these requirements and limitations.

Answer:

The requirement and limitation regarding application of Safeguard Measures in the form of Quantitative Restriction will be set out in the Sub-Decree.

Question 10

Paragraph A of Article 41 states that the National Committee on Trade Remedies may extend a remedy "one time only, for a period of not more than 6 (six) years". Please explain how this is consistent with the requirements of Article 7 and Article 9.2 of the Safeguards Agreement, particularly the requirement in Article 7.1.

Answer:

The "one time only, for a period of not more than 6 (six) years" stated in Para A of Article 41 does not include the period of initial application (please refer to Article 38 for the duration of definitive

safeguard measure). The 6 (six) years includes the one-time extension for period up to 4 years with additional 2 years as Cambodia is a LDC (Article 9.2 of Safeguards Agreement). The requirements of Article 7 of WTO Safeguards Agreement can be found in Para B of Article 41 of the Law.

Question 11

Please clarify which "court of jurisdiction" noted in Article 43(A) of the Law on Trade Remedies would be the appropriate court of review for appeals of antidumping, countervailing duty, or safeguard decisions. Also, please list the findings, decisions, or methodologies applied within an antidumping, countervailing duty, and safeguards proceedings that are subject to judicial review by this court.

Answer:

The court of jurisdiction noted in Article 43(a) would be the Court of the First Instance. List of the findings, decisions, or methodologies applied within an antidumping, countervailing duty, and safeguards proceedings that are subject to judicial review by the court will be developed.

Question 12

The Law on Trade Remedies appears not to contain provisions that implement a number of key procedural requirements in Articles 3 and 4 of the Safeguards Agreement. For example, the Law does not address the requirements in Article 3.1 that the competent authorities hold public hearings or provide other opportunities for interested parties to present evidence and their views; provide for the protection of confidential information as required by Article 3.2; or require that the competent authorities publish a report setting forth their findings and reasoned conclusions of on all pertinent issues of fact and law, as well as a detailed analysis of the case under investigation and a demonstration of the relevance of the factors examined (Article 3.1 and Article 4.2(c)). Please explain how Cambodia would meet these requirements.

Answer:

Article 32 (B) of the Law contains the requirement on public notice while Article 43 (Judicial Review) mentions the public hearings which cover any public hearings hold under three types of Trade remedies investigation. The detailed procedural requirements will be additionally spelled out in the Sub-Decree.

Question 13

The Annex (definitions) at (b) defines "trade remedy duty" as "a duty applied to an imported product as the result of an anti-dumping or safeguards investigation". However, a "trade remedy" is defined in Annex(a) as including antidumping, subsidies and countervailing, and safeguard measures. Please explain why duties resulting from a subsidies and countervailing duty investigation would not also be considered as a trade remedy duty.

Answer:

The reason why "trade remedy duty" in Annex at (b) does not include duties resulting from a subsidies and countervailing duty investigation is because Subsidies and Countervailing measure will be further defined in Sub-Decree as stated in Article 29 of the Law. The sub-decree on subsidies and countervailing measure will clarify this point as necessary.

Question 14

The Annex (f) defines the "Cambodian industry" but does not contain a reference to a regional industry analysis authorized under Articles 4.1(ii) of the AD Agreement and 16.2 of the SCM Agreement. Is such an analysis permitted under the Law on Trade Remedies?

Answer:

Such analysis is permitted under the Law on Trade Remedies. If it is necessary, the regional industry analysis can be spelled out in relevant sub-decree.

Question 15

The Annex at (g) and (m) define "like domestic product" and "like product for anti-dumping investigation", respectively. "Like domestic product" refers to "a domestic product which is identical, i.e. alike in all respects to the investigated product". By contrast, "like product for anti-dumping investigation" refers to "a product which is identical, i.e. alike in all respects to the investigated product, *or another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product*" (italics added for emphasis). Please explain the reason for the difference in the definitions, given that there is no difference in the definition of "like product" in Articles 2.6 of the AD Agreement and 15.1 of the SCM Agreement.

Answer:

The small difference between these two terms is:

"Like domestic product" gives general meaning to the domestically produced product which is a "like product" to the investigated product.

"Like product for Anti-dumping investigation" shall have the same meaning as defined in Articles 2.6 of AD Agreement.

Question 16

The Law on Trade Remedies does not define negligibility. Please explain the meaning of negligible imports, keeping in mind Article 5.8 of the AD Agreement. Similarly, Article 18C of the Law on Trade Remedies states that investigations may be terminated "upon the withdrawal of the application", or when the Committee "determines that there is not sufficient evidence of dumping or injury justifying proceeding with the case". The Law on Trade Remedies does not appear to provide any scenarios for termination of investigations when the volume of dumped imports is negligible. How does Cambodia implement the requirement of Article 5.8 of the AD Agreement requiring the termination of investigations in which "the volume of dumped imports, actual or potential, or the injury, is negligible"?

Answer:

The Law does not define the negligibility, hence the meaning of negligible imports should be interpreted in accordance with Article 5.8 of WTO AD Agreement. It will be clearly defined in the Sub-Decree.

Question 17

How does the Law implement the requirement of Article 6.9 of the AD Agreement that the authority inform all interested parties of the essential facts under consideration before making a final determination?

Answer:

The requirement under Article 6.9 of the AD Agreement will be included in the Sub-Decree.
