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**GHANA INTERNATIONAL TRADE COMMISSION (SAFEGUARD MEASURES)
REGULATIONS, 2019**

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GHANA INTERNATIONAL TRADE COMMISSION (SAFEGUARD MEASURES) REGULATIONS, 2019

IN exercise of the power conferred on the Minister responsible for Trade by section 52 of the Ghana International Trade Commission Act, 2016 (Act 926) and in consultation with the Commission, these Regulations are made this day of, 2019.

Preliminary

Purpose of Regulations

1. The purpose of these Regulations is to prescribe the
 - (a) procedure for the filing of a petition for the imposition of a safeguard measure; and
 - (b) manner for the imposition of a safeguard measure.

Application

2. (1) These Regulations apply to products imported into the country for commercial purposes and destined for consumption within the domestic market.
(2) These Regulations shall not derogate from the application of an obligation of the Republic in respect of the World Trade Organisation Agreement on Safeguards and the General Agreement on Tariffs and Trade, 1994.

Power and Basis for the Imposition of a Safeguard Measure

Basis for imposition of a definitive safeguard measure

3. A definitive safeguard measure may be imposed only where
 - (a) the Commission finds that the product under investigation is being imported into the country
 - (i) in such increased quantities in absolute or relative terms to domestic production, and
 - (ii) under such conditions as to cause or threaten to cause serious injury to a domestic producer of like or directly competitive products,

and as a result of unforeseen developments and the effect of the obligations incurred by the Republic of Ghana under the World Trade Organisation;

- (b) the safeguard measure is required to facilitate adjustment in the domestic industry; and
- (c) the domestic industry has submitted
 - (i) a detailed plan indicating how the domestic industry plans to adjust to meet import competition; or
 - (ii) proof of restructuring that the domestic industry has undertaken.

Power to impose a safeguard measure

4. (1) Pursuant to section 24 of the Act, the Minister may, on the recommendations of the Commission, impose and apply a safeguard measure

- (a) where products are imported into the country in increased quantities in absolute or relative terms to domestic production, and
- (b) where conditions exist to cause or threaten to cause serious injury to a domestic producer of like or directly competitive products.

(2) The Minister may apply a safeguard measure in the form of a customs duty or a quantitative import restriction or both.

(3) Where the Minister imposes a safeguard measure, the Minister may apply the safeguard measure on an imported product irrespective of the source of the product and despite the fact that the Republic may have ratified a free trade agreement or an economic partnership agreement with a country with a substantial supply interest in the product under investigation.

(4) The Minister shall, in accordance with these Regulations, progressively liberalise a safeguard measure imposed at regular intervals throughout the period of validity of the safeguard measure.

Provisional safeguard measure

5. (1) The Minister may, on the recommendation of the Commission, impose a provisional safeguard measure in the form of an increase in tariffs for a period of not more than two hundred days, where a delay in the imposition of a safeguard measure will cause or threaten to cause serious injury to a domestic producer or the domestic industry.

(2) The Commission shall, in determining the period for imposing a safeguard measure under subregulations (7) and (8) of regulation 15, take into consideration the period of a provisional safeguard measure.

Investigation and implementation of a definitive safeguard measure

6. The Commission shall, in the investigation of the merits of a definitive safeguard measure and the implementation of a safeguard measure, have due regard to

- (a) the provisions of the Safeguards Agreement, including the provisions which relate to notifications; and
- (b) consultations between the Republic, the trading partners of the Republic, and the World Trade Organisation Committee on Safeguards.

Investigation by the Commission

Filing of petition

7. (1) A written petition for the imposition of a safeguard measure shall be in the English language and made by or on behalf of the domestic industry in the required format as provided by the Guidelines of the Commission.

(2) In determining whether a petition submitted in terms of subregulation (1) constitutes a properly documented petition, the Commission shall determine whether

- (a) the petition includes information that is reasonably available to the petitioner on the matters contemplated in subregulation (3); and
- (b) a non-confidential version has been submitted.

(3) The petition shall contain

- (a) a complete description of the imported product;
- (b) a complete description of the domestic like or directly competitive product;
- (c) evidence of support for the petition by the affected domestic industry;
- (d) a summary of the factors on which the allegation of serious injury or threat of serious injury is based;
- (e) the unforeseen developments that led to the increased imports;
- (f) the nature of the relief sought;
- (g) efforts made or planned by the petitioner to compete with the imports; and
- (h) any other information required by the Commission.

(4) Where the Commission finds that a petition does not contain sufficient information, as required under subregulation (3), the Commission shall, in writing, inform the petitioner of the deficiency accordingly.

(5) Unless a deficiency is properly addressed within fourteen days of receipt of the notice under subregulation (4), the Commission shall return the petition to the petitioner and shall not proceed to conduct an investigation.

(6) The return of the petition to the petitioner and the decision of the Commission not to proceed with the conduct of the investigation shall not affect the right of the domestic industry to submit a new petition.

Initiation of investigation

8. (1) Except as provided for in subregulation (3), a safeguard investigation shall only be initiated where the Commission receives a written petition by or on behalf of a domestic industry in accordance with regulation 7.

(2) A petition submitted under subregulation (1) shall contain sufficient evidence to establish a *prima facie* case that the product under investigation is being imported into the country

- (a) in such increased quantities in absolute or relative terms to domestic production, and
- (b) under such conditions as to cause or threaten to cause serious injury to a domestic producer of like or directly competitive products.

(3) The Commission may initiate a safeguard investigation without having received a written petition from the domestic industry.

(4) Where the Commission initiates an investigation under subregulation (3), the Commission shall proceed only if the Commission has sufficient evidence to establish a *prima facie* case that the product under investigation is being imported into the country

- (a) in such increased quantities in absolute or relative terms to domestic production, and
- (b) under such conditions as to cause or threaten to cause serious injury to a domestic producer of like or directly competitive products.

(5) The Commission shall make available a non-confidential version of the information the Commission relies on to initiate a safeguard measure under subregulation (2) to all participating interested parties.

(6) Where the domestic industry withdraws the petition or the support for the petition after the investigation has been initiated, the Commission may

- (a) terminate the investigation; or
- (b) disregard the withdrawal of support and continue with the investigation.

Notification

9. (1) The Commission shall initiate an investigation through the publication of an initiation notice in

- (a) the *Gazette*, and
- (b) a daily newspaper of nationwide circulation.

- (2) The initiation notice shall contain at least the following information:
 - (a) the identity of the petitioner;
 - (b) a detailed description of the product under investigation in the Harmonised Commodity System;
 - (c) a detailed description of the like or directly competitive domestic product;
 - (d) the address to which representations by interested parties should be directed; and
 - (e) the time frame for responses by participating interested parties.
- (3) The Commission shall, within seven days after initiation of an investigation,
 - (a) notify the representative of each exporting country that may be significantly affected by a safeguard measure of the initiation of the investigation; and
 - (b) supply each country contemplated in paragraph (a) with a copy of the non-confidential version of the application.

Rights of parties

10. (1) An interested party shall, within twenty-one days from the date of notification of an investigation, submit written comments on the petition to the Commission.
- (2) The Commission may grant an extension for the submission of comments on good cause shown.
- (3) The Commission may prescribe the format in which an interested party may make a submission.
- (4) A submission under these Regulations shall be made in the English language and in hard copy unless the Commission agrees otherwise in writing.
- (5) The Commission may request any additional information from a participating interested party, at any stage of the investigation, and may prescribe a reasonable deadline for the submission of the information.
- (6) In the event that the participating interested party does not cooperate in the investigation, the Commission may rely on the facts available.
- (7) Failure to comply with this regulation may result in the rejection of the submission by the Commission.

Consultations

11. (1) The Commission shall provide for consultations with the representatives of countries that have a substantial interest in a safeguard investigation, within fourteen days after the initiation of a case.

(2) Consultations entered into in terms of subregulation (1) shall normally be concluded within thirty days after the publication of the initiation of the investigation by the Commission.

(3) The Commission shall provide representatives of countries that have a substantial interest in a safeguard investigation, thirty days for consultations before the application or extension of a safeguard measure with a view to

- (a) review the information relating to the
 - (i) evidence of serious injury or threat caused by increased imports;
 - (ii) precise description of the product involved;
 - (iii) proposed measure;
 - (iv) proposed date of introduction of the safeguard measure;
 - (v) expected duration of the safeguard measure; and
 - (vi) timetable for progressive liberalisation of trade in the subject product;
- (b) exchange views on the safeguard measure; and
- (c) discuss ways to maintain a substantially equivalent level of concessions and other obligations regarding those countries.

(4) Where the Commission proposes that a safeguard measure be extended, the Commission shall, in addition to the factors contemplated under subregulation (3), also provide evidence that the relevant domestic industry is adjusting.

Serious injury

12. (1) The Commission shall, in the evaluation of serious injury under paragraph (b) of subregulation (2) of regulation 8 or paragraph (b) of subregulation (4) of regulation 8, consider the information in subregulation (2) pertaining to a major portion of the domestic industry .

- (2) In determining serious injury to a domestic industry, the Commission shall consider
 - (a) the rate and volume of the increase in imports of the product concerned
 - (i) in absolute terms; or
 - (ii) relative to the production and demand in the country; and
 - (b) whether there has been significant changes in the performance of the domestic industry in respect of the following potential injury factors:

- (i) sales volume;
- (ii) profit and loss,
- (iii) output;
- (iv) market share;
- (v) productivity;
- (vi) capacity utilisation; and
- (vii) any other relevant factors placed before the Commission.

(3) The Commission shall, in the evaluation of the rate and volume of increase in imports under paragraph (a) of subregulation (2), investigate whether the increase is recent, sharp, sudden, and significant.

(4) The Commission may request for additional information on the serious injury from any participating interested party at any stage during an investigation.

(5) Each of the factors specified in subregulation (2) shall be considered for the like and directly competitive products for which the analysis can be made.

Determination of cause of serious injury

13. (1) In determining whether there is a causal link between the imports of the product concerned and the serious injury or a threat of serious injury, the Commission shall consider all relevant factors including factors other than the imports of the product concerned that may have contributed to the serious injury to the domestic industry.

(2) The serious injury caused by other factors shall not be attributed to the increased imports.

Final determination

14. (1) The Commission shall, in making a determination, consider whether
- (a) the domestic industry is experiencing serious injury or threat of serious injury, as contemplated in regulation 12;
 - (b) there were increased imports;
 - (c) the increase in imports can be attributed to unforeseen developments;
 - (d) the increased imports resulted in serious injury or threat to the domestic industry;
 - (e) other factors contributed significantly to the serious injury; and
 - (f) the imposition of a safeguard measure would be in the public interest.

(2) In determining whether a safeguard measure would be in the public interest under paragraph (f) of subregulation (1), the Commission shall give special consideration to the trade distorting effect of the surge in imports and the need to restore effective competition.

(3) The Commission shall issue a report indicating the reasons for the final determination within seven days of the publication of the final determination in the *Gazette*.

(4) The report referred to in subregulation (3) shall reflect

- (a) all issues contemplated under subregulation (1);
- (b) unforeseen developments;
- (c) the public interest; and
- (d) the basis of the recommendation of the Commission for
 - (i) a safeguard measure; or
 - (ii) the termination of the investigation.

(5) The Commission shall publish a summarised version of the report referred to in subregulation (3) in the *Gazette* and in a daily newspaper of nationwide circulation.

Definitive safeguard measure

15. (1) A definitive safeguard measure shall be applied only

- (a) to the extent necessary to prevent or provide a remedy to a serious injury or a threat of a serious injury; and
- (b) to facilitate adjustment of the domestic industry.

(2) The domestic industry shall submit an adjustment plan to the Commission to indicate how the domestic industry will adjust to import competition.

(3) The domestic industry shall submit the adjustment plan referred to in subregulation (2) to the Commission within sixty days after the date of publication of the initiation of the investigation in the daily newspaper of nationwide circulation and the *Gazette*.

(4) The Commission may grant an extension for the submission of an adjustment plan where the domestic industry makes a request for an extension on good cause shown.

(5) Where the Commission proposes to apply or extend a safeguard measure, the Commission shall provide the representative of a country that has a substantial interest as exporters of the product under investigation, thirty days for consultations in order to, among others,

- (a) review the information relating to the existence of serious injury or the threat of serious injury caused by
 - (i) increased imports,

- (ii) the precise description of the product involved,
 - (iii) the proposed definitive safeguard measure,
 - (iv) the proposed date of introduction,
 - (v) the expected duration of the definitive safeguard measure, and
 - (vi) the timetable for progressive liberalisation;
- (b) exchange views on the definitive safeguard measure; and
- (c) reach an understanding on ways to maintain a substantially equivalent level of concessions and other obligations to that which exists under the General Agreement on Tariffs and Trade, 1994 between Ghana and the exporting countries which would be affected by the safeguard measure.
- (6) The Commission may recommend a definitive safeguard measure in the form of
- (a) a customs duty;
 - (b) a quantitative restriction; or
 - (c) a combination of a customs duty and a quantitative restriction.

(7) A definitive safeguard measure may remain in place for a period of not more than four years, unless the safeguard measure is extended in accordance with subregulation (8).

(8) A definitive safeguard measure may be extended by a period of up to six years where the Commission finds that

- (a) the lapse of the safeguard measure imposed in terms of subregulation (7) is likely to lead to the recurrence of serious injury; and
- (b) there is evidence that the domestic industry is adjusting.

(9) Where a definitive safeguard measure is imposed for a period of more than one year, the Commission shall recommend how the measure should be liberalised at regular intervals over the period that the measure is applied.

(10) Where the application of a definitive safeguard measure is extended in terms of subregulation (8), the definitive safeguard measure shall continue to be further liberalised over the period of the application.

(11) Where a definitive safeguard measure is imposed for a period of more than three years, the Commission shall conduct a mid-term review of the safeguard measure to determine whether the

- (a) continued application of the definitive safeguard measure is required;

- (b) safeguard measure cannot be liberalised at an increased pace; and
- (c) domestic industry is implementing the adjustment programme.

(12) Where a quantitative restriction is used, the definitive safeguard measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless a clear justification is given that a different level is necessary to prevent or remedy a serious injury.

(13) Where a quota is allocated among supplying countries, the Commission may seek an agreement with respect to the allocation of shares in the quota with all the countries that have a substantial interest in supplying the product concerned.

(14) Where the method contemplated in subregulation (13) is not reasonably practicable, the Commission shall allot to exporting countries that have a substantial interest in the supply of the product, shares, based on the proportions supplied by the exporting countries during a previous representative period, of the total quantity or value of imports of the products.

(15) The Commission shall, in an allotment under subregulation (14), take due account of any special factors which may have affected or may be affecting the trade in the product.

Other safeguard measures

16. (1) Subregulation (14) of regulation 15 does not apply where

- (a) the Commission finds the presence of serious injury and not only a threat of serious injury;
- (b) consultations are conducted with exporting countries;
- (c) there is a clear demonstration to the Commission that imports from certain countries have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period;
- (d) there are justifiable reasons for the departure from the provisions in subregulation (14) of regulation 15; and
- (e) the conditions of the departure are equitable to the exporting country of the product concerned or the supplier failed to cooperate in the investigation.

(2) A safeguard measure imposed in terms of subregulation (1) shall not be extended beyond the initial period for which the safeguard measure was imposed.

(3) A safeguard measure shall not be applied to the import of a product that has previously been subjected to a safeguard measure unless

- (a) a period equivalent to half of that period during which the measure had been applied, has lapsed, and

(b) the period of non-application is not less than two years.

(4) Despite subregulation (3), a safeguard measure with a duration of one hundred and eighty days or less may be applied again to the import of a product if

(a) at least one year has elapsed since the date of introduction of the safeguard measure on the import of that product; and

(b) the safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the safeguard measure.

(5) A safeguard measure shall not be applied against a product originating in a developing country if the share of imports of that developing country of the product in Ghana does not exceed three per cent.

(6) Subregulation (5) applies where developing countries with less than a three per cent import share collectively account for not more than nine per cent of total imports of the product concerned.

(7) Without limiting subregulation (5), a safeguard measure shall be applied to the imports of the product irrespective of the source.

(8) A developing country that is exempted from the application of a safeguard measure in terms of subregulations (5) and (6) may become subject to the safeguard measure without a new investigation being conducted if, subsequent to the imposition of the safeguard measure, the share of the imports of that developing country increases to a level that exceeds three percent of the total import volume in the original investigation period.

Review of decision of Commission

17. A person who is dissatisfied with a decision of the Commission under these Regulations may apply for a judicial review of the final decision of the Commission in accordance with section 43 of the Act.

Miscellaneous

Interpretation

18. In these Regulations, unless the context otherwise requires,

"facts available" means the information that is available to the Commission at the time of making a preliminary or final determination, if all the requirements relating to confidentiality and timely submission of information and evidence have been met;

"good cause" means any matter outside the control of the participating interested party or the Commission that impedes the timely performance of an obligation;

"Harmonised Commodity System" means the Harmonised Commodity Description and Coding System used by Ghana to classify globally traded products;

"participating interested party" means a person, firm, industry, or association that has indicated an interest in participating in proceedings initiated in accordance with these Regulations;

"related parties" mean parties deemed to be related for purposes of a safeguard investigation in that

- (a) one party directly or indirectly owns, controls or holds the equity shares of another party;
- (b) one party has the power to directly or indirectly nominate or appoint a director of the board of another party;
- (c) the parties are partners under the Incorporated Private Partnerships Act, 1962 (Act 152);
- (d) one party is employed by the other party;
- (e) both parties are directly or indirectly controlled by a third party; or
- (f) the relationship between the parties is such that a transaction between the parties cannot normally be considered to be at arm's length; and

"representative" includes an official of an Embassy, a High Commission and any other person designated to represent a country for purposes of these Regulations.

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MR. ALAN KYEREMATEN
Minister responsible for Trade