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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**

**QUESTIONS POSED BY THE UNITED STATES REGARDING THE
NOTIFICATION OF KYRGYZ REPUBLIC¹**

The following communication, dated and received on 2 April 2024, is being circulated at the request of the delegation of the United States.

The United States thanks the Kyrgyz Republic for its notification regarding its law "On Special Safeguard, Anti-Dumping and Countervailing measures for the import of goods" (hereinafter the "Law") and poses the following questions:²

Question 1

Please clarify whether the Kyrgyz Republic's trade remedy laws will work in tandem with the trade remedy laws of the Eurasian Economic Commission (EEC), of which the Kyrgyz Republic is a member, or if the Kyrgyz Republic intends for its laws to supersede or replace the EEC law? Please identify and describe any conflicting provisions between the Kyrgyz Republic's laws and those of the EEC. In the event of any conflicting provisions, which law prevails? What role, if any, will the EEC play in trade remedy investigations brought by the Kyrgyz Republic and conducted under the Kyrgyz Republic's Law?

Question 2

If the Kyrgyz Republic makes an affirmative finding in a trade remedy investigation and imposes antidumping, countervailing duty, or safeguard duties under its own Law, will the duties be applicable to imports of the subject product into all member states of the EEC (i.e., Armenia, Belarus, Kazakhstan, Kyrgyz Republic, and Russia), or only on imports into the Kyrgyz Republic?

Question 3

Please confirm that decisions to impose preliminary antidumping, countervailing, and safeguard (special) duties, as described in Articles 2.16 to 2.18 of the Law will be published and allow for interested parties to respond. Additionally, please identify where such notices will be published. If the notices will be published electronically, please provide the URL website link where such notices will be published.

¹ [G/ADP/N/1/KGZ/3/Suppl.1](#) - [G/SCM/N/1/KGZ/3/Suppl.1](#) - [G/SG/N/1/KGZ/3/Suppl.1](#).

² For the sake of efficiency, the United States suggests that committee review for Questions 1-8, 10, 13, and 15 be conducted in the Committee on Anti-Dumping Practices, committee review for Questions 11, 12, and 14 should be conducted in the Committee on Subsidies and Countervailing Measures, and committee review for Question 9, 16, 17, and 18 should be conducted in the Committee on Safeguards.

Question 4

Please describe the processes by which interested parties can participate and make their views known during an antidumping, countervailing duty, or safeguard investigation, per Article 6 of the WTO Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 12 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), and Articles 3.1 and 12.3 of the WTO Agreement on Safeguards.

Question 5

Please clarify if the same individuals within the investigating authority will perform both the injury and dumping/subsidy/safeguard analysis, or if the injury analysis will be conducted by a different entity or team (*i.e.*, a bifurcated approach). If the injury analysis is conducted by a different entity or team, please explain and identify such entity.

Question 6

Please explain whether the Kyrgyz Republic will incorporate an analysis of public interest into its conduct of trade remedy investigations and/or its decision to impose trade remedy measures. If so, please describe how the public interest analysis is conducted, the entities involved in the process, and the role each entity plays.

Question 7

Please explain how the authorized and investigating bodies intend to comply with Article 3.1 of the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement), which requires an analysis of volume and price effects.

Question 8

Please share what factors the authorized and investigating bodies will examine to determine the condition of the industry. Will the Kyrgyz Republic collect and analyze the factors set out in Article 3.4 of the AD Agreement?

Question 9

Please clarify whether the term "special safeguard" as referred to in Article 2.13 and elsewhere throughout the Law means the same thing as a "safeguard measure" as described in the WTO Agreement on Safeguards.

Question 10

Please provide further information on how procedures to protect confidential information, addressed in both the AD Agreement and SCM Agreement, are being applied by the Kyrgyz Republic.

Question 11

Regarding Articles 24.1 and 24.3 of the Law, please clarify whether the definition of "specific organizations" includes groups of specific organizations equivalent to the definition of "group of enterprises or industries" in Article 2 of the SCM Agreement.

Question 12

Regarding Article 25.2.4 of the Law, please confirm whether you intend to use the word "not" in the phrase "purchases are *not* made for more than adequate remuneration." Should the sentence instead read "...the purchase of goods is not considered as providing a benefit unless...the purchases are made for more than adequate remuneration"?

Question 13

Regarding the definition of *de minimis* subsidy amounts, as referenced in the AD Agreement and SCM Agreement, please explain whether the Kyrgyz Republic will clarify the definition of *de minimis* dumping and subsidy amounts so that it applies to determinations of dumping, subsidization, and injury. Article 26.4 of the Law includes the *de minimis* one percent threshold for purposes of cumulation in an injury determination but does not appear to define the *de minimis* threshold for dumping or subsidization.

Question 14

Please clarify the meaning of "other reasons" in Article 28.4 of the Law, in your treatment of "voluntary commitments." Please confirm that this definition is within the boundaries of Article 18.3 of the SCM Agreement which states that undertakings need not be accepted for "other reasons, including those of general policy." Will the Kyrgyz Republic's "other reasons" be limited to general policy matters and not external factors?

Question 15

Regarding Article 32, we understand and appreciate that you have provided for judicial review of special safeguard, antidumping, and countervailing measures consistent with the judicial procedure provided by your domestic legislation. Please further explain whether there is an opportunity for interested parties to participate in judicial review, the promptness of review, and whether the judicial review process is independent of the administrative and investigation bodies.

Question 16

Article 1, paragraphs 1 and 2 refer to this as a "special safeguard." Please indicate whether the Kyrgyz Republic has enacted other laws that it considers to be "safeguard" laws, such as laws that would permit the Kyrgyz Republic to impose tariffs or quotas for balance of payments purposes, and if so, please identify them and indicate whether the safeguard law here would also apply in those instances.

Question 17

Please expand on the definition of applicability of import quotas (paragraph 8, Article 2). Article 2 of the WTO Agreement on Safeguards uses the term "being imported into its territory," but the definition in paragraph 8 of Article 2 of the Kyrgyz Republic notification uses the term "customs territory of the country and/or integration association". Please explain the distinction between customs territory and integration association used in your paragraph 8 of Article 2.

Question 18

The Kyrgyz provision relating to the application of provisional safeguard measures (paragraph 18, Article 2) seems to omit several important requirements and limitations contained in Article 6 of the WTO Agreement on Safeguards. Among other things, it omits the requirement that a member, before applying a provisional measure, find "critical circumstances where delay would cause damage which it would be difficult to repair," and that "a member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury." Article 6 also limits the duration of any measure to "200 days" during which the pertinent requirements of Articles 2-7 and 12 of the WTO Agreement on Safeguards must be met," specifies the form of relief, and requires that the provisional relief be counted as a part of the overall relief. How does the Law incorporate these requirements and limitations?