

**IN THE FOURTH SESSION OF THE SIXTH
PARLIAMENT**

OF THE

FOURTH REPUBLIC OF GHANA

REPORT OF THE COMMITTEE

ON

TRADE, INDUSTRY AND TOURISM

ON THE

**GHANA INTERNATIONAL TRADE
COMMISSION BILL 2014**

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**IN THE FOURTH SESSION OF THE SIXTH PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA**

**THE REPORT OF THE COMMITTEE ON TRADE, INDUSTRY AND TOURISM
ON THE GHANA INTERNATIONAL TRADE COMMISSION BILL, 2014**

1.0 INTRODUCTION

The Ghana International Trade Commission (GITC) Bill, 2014 was presented and read the first time in the House on Tuesday 11th November, 2014 and referred to the Committee on Trade, Industry and Tourism for consideration and report in accordance with Order 159 of the Standing Orders of the House.

Pursuant to the referral, the Committee requested memorandum from the public and other interest groups.

The Committee met with the Minister of Trade and Industry (MOTI) Hon. Ekwow Spio-Garbrah, Deputy Minister, Hon. Ibrahim Murtala Muhammed, the Chief Director of the Ministry, Mr. Dawarnoba Baeka and some officials from the Ministry, Members of the Tariff Advisory Board (TAB), the Association of Ghana Industries (AGI) led by the Chief Executive Officer, Mr. Seth Twum-Akwaboah, officials from the Attorney General's Department and a representative from the Ghana Revenue Authority were present during the consideration of the Bill.

The Committee wishes to extend its appreciation to those who attended upon it for the immense support provided during the Sittings.

2.0 REFERENCES

In examining the Bill, the Committee was guided by the following:

- The 1992 Constitution of the Republic of Ghana.
- The Standing Orders of the Parliament of Ghana.
- The Customs, Excise and Preventive Service (Management) Act, 1993 (P.N.D.C.L. 330)
- Ghana Revenue Authority Act, 2009 (Act 791)

3.0 BACKGROUND

Ghana became a member of the World Trade Organization (WTO) in 1994 when it ratified the Uruguay Round Final Act and the Marrakech Agreement that established the WTO. By this, Ghana pledged to be in full compliance with WTO's commitments and this required the submission of WTO Agreement for approval or ratification by the individual member countries. In pursuant to this and in accordance with Article 75(2) (b) of the 1992 Constitution of Ghana, Parliament ratified the Marrakech Agreement in 1994.

Whiles Ghana has enacted a number of laws that deals with intellectual property rights which have made it easier to enforce WTO rules on intellectual property, the lack of existence of legislation on other aspects of the WTO commitments such as antidumping, subsidies and countervailing duties and safeguard measures has made it difficult to apply these measures.

In this regard, the Tariff Advisory Board (TAB) which was inaugurated in 2009 was to operate for a period of three years and as part of its functions manage the transition toward the establishment of International Trade Commission. The functions of the Board is to analyse and advise the Ministry on tariff-related issues, receive and investigate petitions and make

appropriate recommendations and oversee the implementation of the capacity development in the private sector in the administration trade contingency measures.

Six years after its inauguration, the Board has served as a learning curve for Members of the Board and Stakeholders, especially, the private sector, yet the transition has not materialized. Meanwhile, because the Board does not have a legal backing it has not been resourced enough, both human and financial to deal with petitions that come before them. Consequently, petitions are channeled through the President of the Republic of Ghana who then refers them to the Ministry of Trade and Industry which also refers the petitions to the Board.

The spillover effect could also be seen in the number of petitions that have been brought before the Parliamentary Select Committee on Trade, Industry and Tourism between the years, 2014 and 2015. Most of these petitions touched on unfair trade practices which affect businesses that have been established in Ghana. Unfortunately, most of these petitions have not been resolved.

The establishment of the Ghana International Trade Commission would make all relevant World Trade Organisation's agreement and contingency trade protection measures part of the legal system which would enable Ghana take advantage of the available remedies.

4.0 PURPOSE OF THE BILL

The purpose of this bill is to establish the Ghana International Trade Commission as an independent, quasi-judicial government agency which will settle disputes between importers and Customs Division of the Ghana Revenue Authority in respect of classification and valuation of products that are imported, gather data and conduct investigations in a number of

areas; tariff investigations, escape clause (safeguard) investigations, anti-dumping investigations and countervailing duty investigations.

The Bill also seeks to re-enact with modification the treaty rules relating to trade remedies within the context of existing laws, especially the Constitution, as has been the approach adopted by most World Trade Organization member countries such as Singapore, India and South Africa.

5.0 DIVISION OF THE BILL

The Bill contains a total number of fifty-four (54) Clauses.

Clause 1 Provides for the establishment of the Commission as a body corporate

Clause 2 Provides for the objects of the Commission which among others are to oversee compliance of the international trade of Ghana in conformity with rules and regulations regarding international trade and protect the domestic market from the impact of unfair trade practices from the international market and domestic market. The Commission in furtherance of its objects is to be guided by the treaty provisions of the World Trade Organisation and the general principles of international trade law.

Clause 3 Functions of the Commission.

Clause 4 Independence of the Commission

Clause 5 Ministerial Directives to the Commission on matters of policy.

Clauses 6-12 Governance of the Commission.

Clauses 13-21 Deals with administration, financial and miscellaneous matters.

Clause 22 -26 Relate to imposition of Special Import Measures.

- Clause 27** Notice to the Committee on Safeguard of the World Trade Organisation or a threat of serious injury caused by increased imports.
- Clause 28** Is on countervailing duties.
- Clause 29** Is on the conduct of investigations for imposition of countervailing duty.
- Clause 30** Duration of a countervailing duty imposed.
- Clauses 31-33** Provisions on antidumping duties are covered.
- Clauses 34-35** Relate to tariff petitions and customs valuation of imported goods.
- Clauses 36-40** Focuses on customs valuation disputes, and any other law relating to customs valuation and the principles of the Agreement on Customs Valuation of the World Trade Organization.
- Clauses 41-50** Power of the Commission to investigate a matter may be exercised either when a complaint has been filed or on its own initiative, with publication of notices.
- Clauses 51-54** Offences and penalties are provided for under *clause 51* and the power to make regulations by legislative instrument is dealt with in *clause 52*. *Clauses 53* and *54* deal with modification and interpretation respectively.

6.0 OBSERVATIONS

6.1 Ratification of Agreements

The Committee observed that a number of laws mainly dealing with intellectual property rights issues have been enacted following the ratification of the Marrakech Agreement. These included the Patents Act, 2003 (Act 657), Geographical Indications Act, 2003 (Act 659), Trademarks Act, 2004 (Act 664), Layout Designs (Topographies of Integrated Circuits) Act, 2004 (Act 667) and the Copyright Act, 2005 (Act 690). The Customs, Excise and Preventive Service (Management) Act, 1993 (P.N.D.C.L. 330)

6.2 Role of the Commission

The Committee observed that the Commission has basically two roles: First, it will support the trade policy-making process by providing empirical evidence. Second, it will also play an adjudicating role, especially in the settlement of disputes.

6.3 Power of the Commission in relation to the trade contingency measures

The Committee further observed that the Commission has the power to make a determination on issues relating to anti-dumping and countervailing measures. However, on issues relating to tariff investigations and recommendations and safeguard measures which might have serious policy implications, the Commission can only make recommendations to the Minister.

6.4 Benefits of the Bill

The Committee was informed that the Bill will significantly provide the following benefits:

- i. Protection of local industries
- ii. Generation of revenue through levies and duties and
- iii. Promotion and attraction of foreign investments

7.0 AMENDMENTS PROPOSED

1. Clause 1 –Establishment of the Commission

In sub-clause (2), line 3, insert the following after “transaction”:

“relating to the objects of the Commission.”

The rationale for the proposed amendment is to qualify any other transaction as one relating to the objects of the Commission.

2. Clause 2 – Objects of the Commission

Delete sub-clause (1)(a) and insert the following:

“(a) oversee the compliance of Ghana with international trade rules and regulations.”

The proposed amendment is for purposes of clarity.

3. Clause 3 - Functions of the Commission

(a) In paragraph (b) of sub-clause (1), line 1, insert “to the Minister” before “tariff”.

This amendment is to specify to whom the recommendation of the tariff levels is to be made.

(b) In paragraph (f) of sub-clause (1), line 2, insert “bilateral and” before “multilateral”.

This is to make room for bilateral agreements.

(c) In paragraph (g) of sub-clause (1), line 1, delete “it” and insert “the Commission”.

The rationale for the proposed amendment is for purposes of clarity.

(d) Delete sub-clause (2) and insert the following:

“(2) In the performance of its functions, the Commission shall

(a) ensure that the Commission is objective and fair; and

(b) seek to balance the competing interests of

- (i) persons that appear before the Commission; and
- (ii) persons indirectly affected by the decisions and actions of the Commission.”

The rationale for the proposed amendment is to substitute clause 4 (2) to take account of clause 3 (2) since they deal with the same subject matter. Reference to the exercise of the functions of the Commission has been deleted as it is superfluous.

4. Clause 4 - Independence of the Commission

- (a) In sub-clause (1), line 4, delete “its functions” and insert “the functions of the Commission.”

The deletion is for purposes of clarity.

- (b) Delete sub-clause (2).

The deletion is consequential upon the redraft of clause 3 (2) to take account of clause 4 (2).

5. Clause 5 - Ministerial directives

Delete sub-clause (1) and insert the following:

“(1) The Minister may give directives in writing to the Commission on matters of policy other than matters under adjudication.”

The rationale for this proposed amendment is to prevent the Minister from issuing any directives in respect of matters under adjudication by the Commission.

6. Clause 6 - Governing body of the commission

Delete sub-clause (6)1 and insert the following;

“6(1) the governing body of the commission is a board consisting of

- a. a chairperson who is a retired Justice of the Superior Court of Judicature or a person qualified to be appointed as a Justice of the Superior Court of Judicature;
- b. one deputy chairperson; and
- c. three other persons, at least one of whom shall be a woman.

*After extensive discussion of this clause, it was agreed that the governing body of the Commission should compose of **five members**, one of whom shall be appointed Chairman and another appointed Deputy Chairman. At least one of the members shall be a woman.*

The proposal to maintain ministerial representatives as members of the governing body was not approved. This was to avoid a situation where the representatives would impose the interest of the Ministry on the outcome of a determination. It was however agreed that the Ministerial representatives be constituted as a Standing Technical Advisory Committee to the commission to be inserted as a new clause after clause 11.

In addition, the Executive Secretary was expunged from being a member of the Board because he/she would be Head of the secretariat.

The choice of a retired judge or person qualified to be a judge is in compliance with Article 285.

7. Clause 7- Duties and liabilities of a member of the Board

In Sub-clause (2), paragraph (b) Line 2 delete

“has a material interest or relational interest” and insert “has an interest”.

This is for clarity

8. Clause 8 - Tenure of Office of Members of the Board

Clause 8 Sub-clause 7 should be deleted

The clause does not apply to the Executive Secretary since he/she is not a member of the Board.

9. Clause 9 - Meetings of the Board

Delete Sub-clause 4 insert the following:

“(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, the deputy chairperson shall preside and in the absence of the deputy chairperson, a member of the Board elected by the members present from among their number shall preside.”

This is for clarity.

10. Clause 11 - Establishment of Committees of the Board

- (a) In sub-clause (1) line 2, add the phrase "of the Board" after "function"
- (b) In sub-clause (2) delete "may" and insert "shall"

The amendment is to make it mandatory.

- (c) Insert a new clause after clause (11) as follows:

"Without limiting section 11, there is established a Technical Advisory Committee consisting of one representative of

- (a) the Ministry responsible for Trade and Industry not below the rank of a Director;
- (b) the Ministry responsible for Finance not below the rank of a Director; and
- (c) the Ministry responsible for Agriculture not below the rank of a Director.

It was generally understood that the representatives of the relevant identified Ministries should not be installed as members of the Commission. This is to avoid any resemblance of direct Government influence in the adjudicative work of the Commission. However, it was also understood that there should exist a formal way by which the commission would engage with the relevant Ministries on a technical, consultative and consistent basis.

11. Clause 13 – Secretariat of the Commission

Delete sub- clause 2

The Head of the Secretariat reports to the Board.

12. Clause 15 - Functions of the Executive Secretary

- (a) Sub-clause 1, paragraph (a) insert 'Chairman of the' before the Board.

This is for purposes clarity.

- (b) Insert a new sub-clause to read as follows:

“3. the Executive Secretary shall be secretary to the Commission and shall provide secretarial functions to the Board and all committees composed by the commission’

This is to explicitly state the function of the Secretary.

13. Clause 16 - Appointment of other staff

Insert the following after sub-clause (3):

“(4) Other public officers may be transferred or seconded to the Commission or may otherwise give assistance to it.”

The proposed amendment is to make provision for other public officers, including the Staff of the Tariff Advisory Board, to be transferred to the Commission.

14. Clause 17 - Funds of the Commission

(a) In sub-clause (1) paragraph (b), delete “its functions” and insert “the functions of the Commission”.

This amendment is for purposes of clarity.

(b) Delete sub-clause (1)(c) and insert the following:

“(c) investment income that may accrue to the Commission;”

This is because the phrase “return on investment” has a technical meaning. This rendition is for purposes of clarity.

(c) In sub-clause (1) paragraph (d), delete “donations, gifts and”.

This is to ensure that the Commission will not be perceived as being compromised by the donations and gifts it receives.

(d) Delete paragraph (e)

The rationale is that it is only Parliament that approves funds.

(e) Insert the following as sub-clause (2)

“(2) The Commission shall seek approval in writing from the Minister responsible for Finance before investing the funds of the Commission in safe securities.”

The rationale is to avoid the situation where funds of the Commission will be invested in treasury bills instead of being used to perform the functions of the Commission. Section 21 of the Financial Administration Act, 2003 (Act 654) states that the Minister for Finance may invest public monies on behalf of the government in the purchase of securities for the periods and on the terms that the Minister thinks fit except that public monies may not be invested in government securities.

15. Clause 18 – Bank account

In clause 18, lines 2 and 3, delete “Minister responsible for Finance” and insert “Controller and Accountant-General”.

This is to ensure that the amendment is in accordance with section 3 of the Financial Administration Act, 2003 (Act 654).

16. Clause 20 – Accounts and audit

In sub-clause (1), lines 1 and 2, delete “in relation to them”.

The reason for the proposed amendment is for purposes of clarity.

17. Clause 22 – Imposition of special import measures

(a) In the arrangement of sections, insert “imposition of” before “special”.

The amendment is being proposed in order for it to accord with the section heading.

(b) In sub-clause (1), interchange paragraphs (b) and (c).

This is to be in alignment with the arrangement of the provisions in the body of the Bill.

(c) In sub-clause (2), paragraph (b), delete “its own initiative” and insert “the initiative of the Commission”.

The amendment is for purposes of clarity.

(d) In sub-clause (3), paragraph (b), delete “its own initiative” and insert “the initiative of the Commission”.

This is for purposes of clarity.

(e) In sub-clause (5), delete “its powers” and insert “the powers of the Commission”.

The proposed amendment is for purposes of clarity.

18. Clause 23 – Conduct of investigations for imposition of special import measures

In sub-clause (2), line 1, delete “its investigation” and insert “the investigation of the Commission.”

The rationale for the proposed amendment is for purposes of clarity.

19. Clause 25 – Conduct of investigations for imposition of safeguard measures

In sub-clause (2), insert a new paragraph (b) after paragraph (a) as follows:

“(b) publishing a notice of the investigation in a state-owned daily newspaper of nationwide circulation”.

The reason for the proposed amendment is to provide for publication in a state-owned daily newspaper of nationwide circulation which will be accessible to the general public as the Gazette is not easily accessible to the general public.

20. Clause 26 – Duration of Safeguard Measures

In Sub-clause (1) paragraph (a), insert “or threat of serious injury” after “injury”.

This amendment is for purposes of clarity.

21. Clause 28 – Imposition of countervailing duty

In Sub-clause (1), delete “may” and insert “shall”.

The amendment will not make it mandatory.

22. Clause 33 – Duration of antidumping duty

In Sub-clause (1), delete “shall” and insert “may”.

The amendment is to make it mandatory

23. Clause 35 – Review of tariff petition

In sub-clause (3), line 4, insert “and state the reasons for the decision” after “Commission”.

This is to make it mandatory for the Commission to state the reasons for the decision to the petitioner.

24. Clause 36 - Power of the Commission

- (a) Delete the heading “Customs Valuation Disputes” and insert “Settlement of disputes”.

The amendment is to make it reflect the content of that section.

- (b) Delete clause 36 and insert the following:

“36. The Commission shall have the power to settle a dispute arising as a result of a classification, valuation or origin determination by the Customs Division of the Ghana Revenue Authority or any other matter related to international trade”.

The amendment is to give the Commission power to settle disputes arising from customs classification.

25. Clause 37 - Submission of complaints for valuation

- (a) In the heading, delete the words “for valuation”;
- (b) In sub-clause (1) line 2, delete the word “valuation” and insert “dispute” and delete the words appearing after “Commission” in line 3”;
- (c) In sub-clause (2) line 2, insert the words “classification or” before the words “dutiable value”;
- (d) In sub-clause (3), line 1, insert “prescribed” before “form”.

The reason for this amendment is to specify that the forms will be provided for in Regulations.

- (e) Delete sub-clause (5) and insert the following;

“(5) Subject to any other enactment, the settlement of a customs valuation dispute may be by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) or a hearing before the Commission”.

This is to ensure that reference is made to the Alternative Dispute Resolution Act, 2010 (Act 798) in the settlement of disputes.

- (f) In sub-clause (5) Reference should be made to the Arbitration act.
- (g) Sub-clause (6) should be deleted.

The reason is it is superfluous. The amendments to clause 37 are consequential in view of the amendment to clause 36.

26. Clause 38 - Interim Order of Commission

- (a) In sub-clause (1) lines 1 and 2, delete the words “the value of the products for custom purposes”, insert the words “a dispute under clause 36”;
- (b) In sub-clause (1) paragraph (a), line 2, delete “value of the products for custom purposes” and insert dispute”;
- (c) In sub-clause (1) paragraph (c), line 2, delete “value of the products” and insert “dispute”

The amendment to clause 38 is consequential in view of the amendment to clause 36.

27. Clause 39 – Decision of the Commission

A proposal to amend the heading to read:

(a) “Notices and Decisions of the Commission”

This is to ensure that the Commission publishes notice of its decisions.

In sub-clause (2) insert “and state the reasons for the decision” after “Commission”.

The rationale for the proposed amendment is to make it mandatory for the Executive Secretary to state the reasons for the decision to the parties concerned.

(b) Delete sub-clause (4) and insert the following:

“(4) The Commission shall publish a notice of its decision and the decision of the Commission in the Gazette”.

This is for purposes of clarity.

28. Clause 40 - Non-liability for payment of customs duty

(a) In the heading, delete the words “custom duty” and insert the word ‘penalty’.

The reason is that the non-liability is for the payment of penalty.

(b) In line 5, delete “of” and insert “on”.

The rationale for the proposed amendment is for purposes of clarity.

29. Clause 41 - Investigations

(a) In sub-clause (1), line 2, delete “shall” and insert “may”.

The proposed amendment is to make it discretionary for the Commission to investigate a matter instead of mandatory.

- (b) In sub-clause (1), line 2, insert “on” after “investigation” and delete “on” in paragraphs (a), (b) and (c).

This amendment is to have a neater draft.

- (c) In sub-clause (3), line 3, insert “the” after “that” and delete “the” in paragraphs (a) to (d).

The reason for the proposed amendment is to have a neater draft.

- (d) In sub-clause (6) line 2, delete “(f)”.

This will enable the Commission to seek the assistance of the Court to enforce all the provisions of sub-clause (4).

30. Clause 42 – Conduct of proceedings

- (a) In sub-clause (2), line 2, delete “on request by a party”.

The rationale for the proposed amendment is that the original rendition will hinder the work of the Commission as the parties may inundate the Commission with requests.

- (b) In sub-clause (3), line 2, delete “legal” and insert “a”.

The amendment is not to limit the representation to lawyers.

- (b) In sub-clause (4), line 1, after “Commission”, delete “may” and insert “shall” and delete “informally and” after “proceedings”.

This is to ensure that proceedings are only conducted formally.

33. Clause 45 – Cease and desist order

- (a) In sub-clause (1), line 1, delete “of products”.

The rationale for the proposed amendment is that “importer” has been defined as a person who brings products into Ghana so the words are superfluous

(b) Delete sub-clause (3) and insert the following:

“(3) The Commission shall notify the importer in writing of the intention of the Commission to vary or revoke a cease and desist order.”

This amendment is for purposes of clarity.

34. Clause 47 – Collaboration with authorities

(a) In sub-clause (1), line 3, delete “its functions” and insert “the functions of the Commission.

The amendment is for purposes of clarity.

(b) Delete sub-clause (3), paragraph (b) and insert the following:

“(b) assign any of the officers or employees of the Government department or agency to assist the Commission in the performance of the functions of the Commission.

This amendment is for purposes of clarity.

35. Clause 48 – Disclosure of confidential information

Delete sub-clause (6) which provides the definition for “business information protective order” and send this to clause 54 on interpretation.

This is for purposes of clarity. It is easier to locate the definition in the clause on interpretation.

37. Clause 50 – Publication of notices

(a) In the headnote, insert “decisions and” after “of”; and

The heading should include notices to enable the Commission publish its notices and decisions.

(b) In clause 50, line 1 after “notice” insert “or decision” and in line 2, after “notice” insert “or the decision”.

The amendment is for purposes of clarity.

36. Clause 51 – Offences and penalties

- (a) In paragraph (b) of sub-clause (1) of clause 51, line 1, delete “fails” and insert “refuses”.

The reason for the proposed amendment is that the penalty should be for a deliberate act of refusal to provide information and not just for a failure to provide information.

- (b) In paragraph (a) of sub-clause (2) of clause 51, line 3, delete “its functions” and insert “the functions of the Commission.”

This is for purposes of clarity.

37. Clause 52 – Regulations

In clause 52, line 1, delete “Board” and insert “Commission”.

The rationale for the proposed amendment is for the Minister to make the Regulations in consultation with the Commission and not the Board

38. Clause 54— Interpretation

Insert the following definitions in alphabetical order:

“business information protection order” means an order by the Commission to the recipient of confidential information to restrain the recipient from disclosure of the confidential information;

This is for ease of reference.

Delete the definition of “dumping” and insert the following:

“**dumping**” means the introduction of a product into the commerce of another country at less than its normal product value in the ordinary course of trade, for the like product when destined for consumption in the exporting county.”

The proposed amendment is to state the definition of dumping as provided in the agreements.

“Dispute” means a disagreement arising out of a classification, valuation or origin determination by the Customs Division of the Ghana Revenue Authority or any other matter related to international trade”;

“Minister” means the Minister responsible for Trade.

“serious injury” means a significant overall impairment in the position of a domestic firm.

Serious injury was not defined in the interpretation clause.

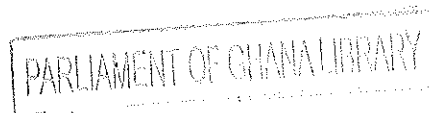
8.0 CONCLUSION

The Committee after carefully examining the Bill concluded that the passage of this GITC Bill into law would make the relevant World Trade Organisation's Agreements and contingency trade protection measures part of our legal system which would enable Ghana take advantage of the available remedies. This has the potential of not only protecting our local industries and generating revenue but also attracting foreign investments.

To resolve the impasse between the Customs Division of Ghana Revenue Authority and importers, the Commission will provide a new policy focus to create an agreeable atmosphere as basis to resolve disputes.

The Committee therefore recommends to the House to pass the **Ghana International Trade Commission (GITC) Bill, 2014** subject to the amendments proposed.

Respectfully submitted.



Handwritten signature of Hon. George K. Aboagye in black ink.

HON. GEORGE K. ABOAGYE
CHAIRMAN TO THE COMMITTEE

Handwritten signature of Ms. Evelyn Brefo-Boateng in black ink.

MS. EVELYN BREFO-BOATENG
CLERK TO THE COMMITTEE