

CHAPTER 5 TRADE REMEDIES

Article 5.1: Scope

1. With respect to the UAE, this Chapter shall apply to the trade remedies investigations and measures that are taken under the authority of the Minister of Economy or its successor.
2. With respect to Viet Nam, this Chapter shall apply to the trade remedies investigations and measures that are taken under the authority of the Minister of Industry and Trade of Viet Nam or its successor.

Article 5.2: Anti-Dumping and Countervailing Measures

1. The Parties reaffirm their rights and obligations under the provisions of Article VI and Article XVI of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement.
2. The Parties recognise the right to apply measures consistent with Article VI of the GATT 1994, the Anti-Dumping Agreement, the SCM Agreement, and the importance of promoting transparency.
3. Except as otherwise stipulated in this Article, this Agreement does not confer any additional rights or obligations on the Parties with regard to anti-dumping and countervailing measures, including the initiation and conduct of anti-dumping and countervailing duty investigations, as well as the application of anti-dumping and countervailing measures.
4. When the investigating authority of a Party receives a properly documented application by or on behalf of its domestic industry for the initiation of an anti-dumping investigation in respect of a product from the other Party, the former Party shall notify the other Party of the application as far in advance of the initiation of such investigation and by no later than 10 days before the date of initiation of the investigation.
5. As soon as possible after accepting a properly documented application for a countervailing duty investigation in respect of a product of the other Party, and in any event before initiating an investigation, the Party shall provide written notification of its receipt of the application to the other Party and invite the other Party for consultations with the aim of clarifying the situation as to the matters referred to in the application and arriving at a mutually agreed solution.

6. The investigating authority of each Party shall ensure, before a final determination is made, the disclosure of all essential facts under consideration which form the basis for the decision whether to apply definitive measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing and allow interested parties sufficient time to make their comments.
7. Interested parties should be granted the right to express their views during anti-dumping and countervailing duty investigations in accordance with the conditions of each Party's domestic laws and regulations.
8. The Parties shall observe the following practices in anti-dumping or countervailing cases between them in order to enhance transparency in the implementation of the WTO Agreement:
 - (a) when dumping margins are established, assessed, or reviewed under Articles 2, 9.3, 9.5, and 11 of the Anti-Dumping Agreement regardless of the comparison bases under Article 2.4.2 of the Anti-Dumping Agreement, all individual margins, whether positive or negative, should be counted toward the average;
 - (b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, the Party taking such a decision may apply the "lesser duty" rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry; and
 - (c) the investigating Party shall request an exporter or producer in the territory of the other Party for a timely response to its questionnaires. When the investigating Party finds a major deficiency in information in a questionnaire response from relevant exporter or producer received before the deadline or requires clarifications for the purposes of investigation, the investigating Party shall demand the missing information or request clarification of information concerning the answers to the questionnaires. This procedure shall not be used to cause unwarranted delays in the investigation or to circumvent the deadlines which are provided in the Party's domestic laws and regulations.
9. In an anti-dumping investigation, where a Party's authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the Party shall afford due consideration and adequate opportunity for consultations, to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in the suspension of the investigation without the imposition of anti-dumping duties, through the means provided for in the Party's domestic laws and regulations.

10. In a countervailing duty investigation, where a Party's authorities have made a preliminary affirmative determination of subsidisation and injury caused by such subsidisation, the Party shall afford due consideration and adequate opportunity for consultations, to the other Party and exporters of the other Party, regarding proposed undertakings on price, which, if accepted, may result in the suspension of the investigation without the imposition of countervailing duties, through the means provided for in the Party's domestic laws and regulations.
11. The Parties agree to examine, with special care, any application for the initiation of an antidumping investigation on a good originating in the other Party and on which anti-dumping measures have been terminated in the previous 12 months as a result of a review. Unless this pre-initiation examination indicates that the circumstances have changed, the investigation shall not proceed.
12. When imports of a product from more than one country are simultaneously subject to anti-dumping or countervailing duty investigation, a Party shall examine, with special care, whether the cumulative assessment of the effect of the imports from the other Party is appropriate in light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.

Article 5.3: Transitional Safeguard Measures

1. For the purposes of this Article:

domestic industry means, with respect to an imported product, the producers as a whole of the like or directly competitive products operating within the territory of a Party, or those producers whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of that product;

provisional transitional safeguard measure means a provisional safeguard measure described in paragraph 12;

serious injury means a significant overall impairment in the position of a domestic industry;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent;

transition period, means, in relation to a particular product, the period of the staged tariff elimination for that good, in accordance with a Party's Schedule in Annex 2A (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods); and

transitional safeguard measure means a transitional safeguard measure described in paragraph 2.

2. If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating product of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing a like or directly competitive product, the importing Party may, to the extent necessary to prevent or remedy serious injury, apply a transitional safeguard measure consisting of:
 - (a) the suspension of further reduction of any rate of customs duty provided for under this Agreement on the product; or
 - (b) an increase in the rate of customs duty on the product to a level not to exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty in effect on the day when the transitional safeguard measure is taken; or
 - (ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date this Agreement enters into force.
3. A Party shall immediately notify the other Party in writing upon:
 - (a) initiating an investigation described in paragraph 5;
 - (b) making a finding of serious injury or threat of serious injury caused by increased imports described in paragraph 2; or
 - (c) taking a decision to apply, extend or modify a transitional safeguard measure.
4. On request of a Party whose product is subject to a transitional safeguard investigation under this Article, the Party conducting that investigation shall enter into consultations with the requesting Party with a view to reviewing the non-confidential version of the information arising from the investigation and exchanging views on the measure.
5. A Party shall apply a transitional safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.
6. In the investigation described in paragraph 5, the Party shall comply with the requirements of Article 4.2 (a) and (b) of the Safeguards Agreement, and to this end, Article 4.2 (a) and (b) of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

7. Each Party shall ensure that its competent authorities complete the investigation referred to in paragraph 5 within one year following its date of initiation.
8. A Party shall not apply a transitional safeguard measure:
 - (a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;
 - (b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a transitional safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years; or
 - (c) beyond the expiration of the transition period.
9. A Party shall not apply a transitional safeguard measure more than once on the same product.
10. Where the expected duration of a transitional safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.
11. When a Party terminates a transitional safeguard measure, the rate of customs duty for the originating product subject to that measure shall be the rate that, in accordance with the Party's Schedule in Annex 2A (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods), would have been in effect but for that measure.
12. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a provisional transitional safeguard measure pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating product from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports have caused or are threatening to cause serious injury to the domestic industry.
13. Before applying a provisional transitional safeguard measure, the applying Party shall notify the other Party.
14. The duration of any provisional transitional safeguard measure shall not exceed 200 days, during which time the Party applying that measure shall comply with the requirements of paragraphs 5 and 6.

15. The Party applying the provisional transitional safeguard measure shall promptly refund any tariff increases if the investigation described in paragraph 5 does not result in a finding that the requirements of paragraph 2 are met. For greater certainty, the duration of any provisional transitional safeguard measure shall be counted as part of the period described in subparagraph 8(b).
16. No later than 30 days after the application of the transitional safeguard measure, the Party applying that measure shall afford an opportunity for the other Party to consult with the applying Party regarding appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The applying Party shall provide such compensation as the Parties mutually agree.
17. If the consultations under paragraph 16 do not result in an agreement on trade liberalising compensation within 30 days of the beginning of the consultations, the Party whose goods are subject to the transitional safeguard measure may suspend the application of concessions, with respect to originating goods of the Party applying the transitional safeguard measure, which have trade effects substantially equivalent to the transitional safeguard measure.
18. A Party against whose product the transitional safeguard measure is applied shall notify the Party applying the transitional safeguard measure in writing at least 30 days before it suspends concessions in accordance with paragraph 17.
19. The right to suspend the application of concessions under paragraph 17 shall not be exercised for the first 24 months during which the transitional safeguard measure is in effect, provided that the transitional safeguard measure has been applied as a result of an absolute increase in imports and that it conforms to this Agreement.
20. The obligation to provide compensation under paragraph 16 and the right to suspend the application of concessions under paragraph 17 shall terminate on the date the transitional safeguard measure terminates.

Article 5.4: Global Safeguard Measures

1. The Parties reaffirm their rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of the GATT 1994 and the Safeguards Agreement.
2. A Party shall not apply, with respect to the same product, at the same time:
 - (a) a transitional safeguard measure under Article 5.3 (Transitional Safeguard Measures); and

- (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.
- 3. At the request of the other Party and provided that it has a substantial interest, the Party intending to take safeguard measures shall provide immediately written notification of all pertinent information on the initiation of the safeguard investigation, the provisional findings and the final findings of the investigation.
- 4. For greater certainty, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported goods during the most recent three-year period of time, measured in terms of either absolute volume or value.

Article 5.5: Cooperation on Trade Remedies

The Parties shall endeavour to encourage cooperation on trade remedies between the relevant authorities of each Party who have responsibility for trade remedy matters.

Article 5.6: Dispute Settlement

Except for Article 5.3 (Transitional Safeguard Measures), neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute Settlement) for any matter arising under this Chapter.