

CHAPTER 3

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 3.1

General Provisions

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.

2. The Parties, recognising that anti-dumping and countervailing measures can be abused to obstruct trade, agree that:
 - (a) trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system; and
 - (b) careful consideration should be given to the interests of the other Party when a Party considers imposing such measures.
3. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

ARTICLE 3.2

Transparency

1. Without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement, the Parties shall ensure, immediately after any imposition of provisional measures and in any case before the final determination is made, full and meaningful disclosure to interested parties of all essential facts and considerations which form the basis for the decision to apply measures. Disclosures shall be made in writing and allow interested parties sufficient time to make their comments.

2. Provided it does not unnecessarily delay the conduct of the investigation, interested parties shall be granted the possibility to be heard in order to express their views during trade remedies investigations.

ARTICLE 3.3

Consideration of Public Interest

A Party shall not impose anti-dumping or countervailing measures where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. In determining the public interest, the Party shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organisations, based on the relevant information provided to the investigating authorities.

ARTICLE 3.4

Lesser Duty Rule

An anti-dumping or countervailing duty imposed by a Party shall not exceed the margin of dumping or countervailable subsidy, and the Party shall endeavour to ensure that the amount of this duty is less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 3.5

Exclusion from Dispute Settlement

The provisions of this Section shall not be subject to Chapter 15 (Dispute Settlement).

SECTION B

GLOBAL SAFEGUARD MEASURES

ARTICLE 3.6

General Provisions

1. The Parties affirm their rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.
2. A Party shall not apply with respect to the same good at the same time:
 - (a) a bilateral safeguard measure under Section C (Bilateral Safeguard Clause) of this Chapter;
and

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

3. For the purposes of this Section, origin shall be determined in accordance with Article 1 of the Agreement on Rules of Origin.

ARTICLE 3.7

Transparency

1. Notwithstanding Article 3.6 (General Provisions), the Party initiating a global safeguard investigation or intending to impose global safeguard measures shall immediately provide, at the request of the other Party and provided that it has a substantial interest, *ad hoc* written notification of all pertinent information leading to the initiation of a global safeguard investigation and, as the case may be, the proposal to impose the global safeguard measures, including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.

2. When imposing global safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.

3. For the purposes of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive safeguard measures are met, it shall notify the other Party and give the possibility to hold bilateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the Party may adopt the definitive global safeguard measures. The possibility to hold consultations should be offered to the other Party in order to exchange views on the information referred to in paragraph 1.

ARTICLE 3.8

Exclusion from Dispute Settlement

The provisions of this Section referring to WTO rights and obligations shall not be subject to Chapter 15 (Dispute Settlement).

SECTION C

BILATERAL SAFEGUARD CLAUSE

ARTICLE 3.9

Definitions

For the purposes of this Section:

- (a) "domestic industry" shall be understood in accordance with subparagraph 1(c) of Article 4 of the Safeguards Agreement. To that end, subparagraph 1(c) of Article 4 of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*;
- (b) "serious injury" and "threat of serious injury" shall be understood in accordance with subparagraphs 1(a) and 1(b) of Article 4 of the Safeguards Agreement; to that end subparagraphs 1(a) and 1(b) of Article 4 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*; and
- (c) "transition period" means a period of 10 years from the entry into force of this Agreement.

ARTICLE 3.10

Application of a Bilateral Safeguard Measure

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, any good originating in the territory of a Party is being imported into the territory of the other 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 a domestic industry producing like or directly competitive goods, the importing Party may adopt measures provided for in paragraph 2 in accordance with the conditions and procedures laid down in this Section during the transition period only, except as otherwise provided for in subparagraph 6(c) of Article 3.11 (Conditions and Limitations).

2. The importing Party may impose a bilateral safeguard measure which:
 - (a) suspends the further reduction of the rate of customs duty on the good concerned as provided for in Annex 2-A (Elimination of Customs Duties); or

 - (b) increases the rate of customs duty on the good to a level which does not exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty on the good in effect at the time the measure is taken; or

- (ii) the base rate of customs duty specified in the schedules included in Annex 2-A (Elimination of Customs Duties) pursuant to Article 2.6 (Reduction or Elimination of Customs Duties on Imports).

ARTICLE 3.11

Conditions and Limitations

1. A Party shall notify the other Party in writing of the initiation of the investigation referred to in paragraph 2 and consult with the other Party as far as practicable in advance of applying a bilateral safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the measure.
2. A Party shall only apply a bilateral safeguard measure following an investigation by its competent authorities in accordance with Article 3 and subparagraph 2(c) of Article 4 of the Safeguards Agreement. To that end, Article 3 and subparagraph 2(c) of Article 4 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
3. In the investigation referred to in paragraph 2, the Party shall comply with the requirements of subparagraph 2(a) of Article 4 of the Safeguards Agreement. To that end, subparagraph 2(a) of Article 4 of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

4. The investigation shall also demonstrate, on the basis of objective evidence, the existence of a causal link between increased imports and the serious injury or threat thereof. The investigation shall also take into consideration the existence of any factor other than increased imports which may also cause injury at the same time.

5. Each Party shall ensure that its competent authorities complete the investigation referred to in paragraph 2 within one year of the date of its initiation.

6. A Party shall not apply a bilateral safeguard measure:

- (a) except to the extent, and for such time, as it is 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 two years if the competent authorities of the importing Party determine, in conformity with the procedures set out 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 safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or
- (c) beyond the expiration of the transition period, except with the consent of the other Party.

7. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is more than two years, the Party applying the measure shall progressively liberalise the measure at regular intervals during the period of application.

8. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to its schedule included in Annex 2-A (Elimination of Customs Duties), would have been in effect but for the measure.

ARTICLE 3.12

Provisional Measures

In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause serious injury, or threat thereof, to the domestic industry. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of paragraphs 2 and 3 of Article 3.11 (Conditions and Limitations). The Party shall promptly refund any tariff increases if the investigation referred to in paragraph 2 of Article 3.11 (Conditions and Limitations) does not result in a finding that the requirements of paragraph 1 of Article 3.10 (Application of a Bilateral Safeguard Measure) are met. The duration of any provisional measure shall be counted as part of the period prescribed by subparagraph 5(b) of Article 3.11 (Conditions and Limitations).

ARTICLE 3.13

Compensation

1. A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade-liberalising compensation in the form of concessions having substantially equivalent trade effects or in the form of concessions equivalent to the value of the additional duties expected to result from the safeguard measure. The Party applying a bilateral safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the consultations begin, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of concessions, with respect to originating goods of the Party applying the bilateral safeguard measure, which have trade effects substantially equivalent to the bilateral safeguard measure. The obligation to provide compensation, incumbent on the Party applying the bilateral safeguard measure, and the other Party's right to suspend concessions under this paragraph shall terminate on the same date as the bilateral safeguard measure terminates.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the safeguard measure conforms to the provisions of this Agreement.

ARTICLE 3.14

Use of the English Language

In order to ensure the maximum efficiency for the application of the trade remedy rules under this Chapter, the investigating authorities of the Parties shall use the English language as a basis for communications and documents exchanged in the context of trade remedy investigations between the Parties.