

CHAPTER 6 TRADE REMEDIES

Section A: Safeguard Measures

ARTICLE 6.1: APPLICATION OF A SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good 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 be a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement;
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the most-favoured-nation (hereinafter referred to as “MFN”) applied rate of duty on the good in effect at the time the safeguard measure is applied; and
 - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of duty to a level that, for each season, does not exceed the lesser of:
 - (i) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of application of the safeguard measure; and
 - (ii) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of entry into force of this Agreement.

ARTICLE 6.2: CONDITIONS AND LIMITATIONS

1. A Party shall apply a safeguard measure only following an investigation by the Party’s competent authorities in accordance with the procedures and requirements provided for in Articles 3 and 4.2⁷ of the Safeguards Agreement, and to this end, Articles 3 and 4.2 of

⁷ For the purpose of incorporating Article 4.2 of the Safeguards Agreement, the causal link referred to in Article 4.2(b) of the Safeguards Agreement means “substantial cause” as defined in Article 6.6.

the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. A Party shall notify the other Party in writing upon initiation of an investigation described in paragraph 1 and shall consult with the other Party as far in advance of applying a safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the safeguard measure.

3. Each Party shall ensure that its competent authorities complete any such investigation within one year of the date of its initiation.

4. Neither Party shall apply or maintain a 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 applying Party determine, in conformity with the procedures specified in this Article, that the safeguard 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, shall not exceed three years; or
- (c) beyond the expiration of the transition period, except with the consent of the other Party.

5. Neither Party shall apply a safeguard measure more than once against the same good.

6. No safeguard measure or provisional safeguard measure shall be applied against a particular good while a global safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement in respect of that good is in place. In the event that a global safeguard measure is taken in respect of a particular good, any existing safeguard measure or provisional safeguard measure which is taken against that good in accordance with this Section shall be terminated.

7. Where the expected duration of a safeguard measure is over one year, the applying Party shall progressively liberalise it at regular intervals.

8. When a Party terminates a safeguard measure, the rate of customs duty shall be the rate that, in accordance with the Party's Schedule to Annex 2-A (Elimination of Customs Duties), would have been in effect but for the safeguard measure.

ARTICLE 6.3: PROVISIONAL SAFEGUARD MEASURE

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a provisional safeguard measure in accordance with a preliminary

determination by its competent authorities 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 have become a substantial cause of serious injury, or threat thereof, to its domestic industry.

2. Before applying a provisional safeguard measure the applying Party shall notify the other Party and shall immediately initiate consultations after applying the provisional safeguard measure.

3. The duration of any provisional safeguard measure shall not exceed 200 days, during which time the applying Party shall comply with the requirements of Article 6.2.1.

4. The applying Party shall promptly refund any additional customs duties collected as a result of a provisional safeguard measure if the investigation conducted in accordance with Article 6.2.1 does not result in a finding that the requirements of Article 6.1 have been met. The duration of any provisional measure shall be counted as part of the period described in Article 6.2.4(b).

ARTICLE 6.4: COMPENSATION

1. No later than 30 days after it applies a safeguard measure, a Party shall afford an opportunity for the other Party to consult with it 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 safeguard measure. The applying Party shall provide such compensation as the Parties mutually agree.

2. If the Parties are unable to agree on compensation within 30 days after consultations begin in accordance with paragraph 1, the Party against whose originating good the safeguard measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.

3. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions in accordance with paragraph 2 shall terminate on the date the safeguard measure terminates.

ARTICLE 6.5: GLOBAL SAFEGUARD MEASURES

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement and the Agreement on Agriculture. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with respect to measures applied under Article XIX of GATT 1994 and the Safeguards Agreement or the Agreement on Agriculture, except that a Party applying such a measure under Article XIX of GATT 1994 and the Safeguards Agreement may exclude imports of an originating good of the other Party, from the measure.

ARTICLE 6.6: DEFINITIONS

For the purposes of Section A:

Agreement on Agriculture means the *Agreement on Agriculture*, in Annex 1A of the WTO Agreement;

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

safeguard measure means a measure described in Article 6.1;

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

substantial cause means the dominant cause that contributes more than any other individual cause;

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; and

transition period in relation to a particular good means the period from the date of entry into force of this Agreement until five years after the date of the elimination or the completion of the reduction period of the customs duties in accordance with that Party's schedule of tariff commitments in Annex 2-A (Elimination of Customs Duties).

Section B: Agricultural Safeguard Measures

ARTICLE 6.7: AGRICULTURAL SAFEGUARD MEASURES

1. Notwithstanding Article 2.3 (Elimination of Customs Duties), a Party may apply an agricultural safeguard measure on an originating agricultural good listed in that Party's Schedule to Annex 6-A, if the aggregate volume of imports of that good in any calendar year exceeds a trigger level set out in that Party's Schedule to Annex 6-A.

2. The duty to be applied as the agricultural safeguard measure under paragraph 1 shall not exceed the lesser of:

- (a) the prevailing MFN applied rate;
- (b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
- (c) the duty rate set out in the applying Party's Schedule to Annex 6-A.

3. Neither Party shall maintain an agricultural safeguard measure under this Article beyond the end of the calendar year in which it has applied the measure.

4. Neither Party shall apply or maintain an agricultural safeguard measure on an originating agricultural good if the period specified in the agricultural safeguard provisions of the Party's Schedule to Annex 6-A has expired.

5. Neither Party shall apply or maintain an agricultural safeguard measure under this Article and at the same time apply or maintain, on the same good:

- (a) a safeguard measure under this Agreement;
- (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement;
or
- (c) a safeguard measure applied under the Agreement on Agriculture.

6. A Party shall implement agricultural safeguard measures in a transparent manner. Within 60 days after applying a measure, the Party applying an agricultural safeguard measure shall notify the other Party in writing and provide it with relevant data concerning the measure including trade volumes. On request, the Party applying the agricultural safeguard measure shall consult with the other Party with respect to the conditions of the application of such agricultural safeguard measure.

7. A good which is *en route* on the basis of a contract settled before the agricultural safeguard measure is applied shall be exempted from the application of the safeguard measure provided that it may be counted in the volume of imports of the good in question during the following calendar year for the purposes of triggering the provisions of paragraph 1 in that calendar year.

8. The implementation and operation of this Article may be the subject of discussion and review in the Committee on Trade in Goods.

Section C: Anti-dumping and Countervailing Measures

ARTICLE 6.8: ANTI-DUMPING AND COUNTERVAILING MEASURES

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing measures. Unless otherwise provided in this Chapter, nothing in this Agreement shall be construed to confer any additional rights or impose any additional obligations on a Party with respect to anti-dumping or countervailing measures.

2. In order to enhance transparency in the implementation of the WTO Agreement:

- (a) the Parties confirm their current practice of counting toward the average all individual margins, whether positive or negative, when anti-dumping margins are established on the weighted-to-weighted basis or transaction-to-transaction basis, or weighted-to-transaction basis, and share their expectation that such practice will continue⁸; and
- (b) the Party making such a decision to impose an anti-dumping duty in accordance with Article 9.1 of the Anti-Dumping Agreement, shall normally 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.

ARTICLE 6.9: NOTIFICATION AND CONSULTATIONS

1. After receipt by a Party's competent authorities of a properly documented anti-dumping application relating to imports from the other Party and before proceeding to initiate an investigation, the Party shall give written notice, at the earliest possible opportunity, to the other Party and, immediately after initiating an investigation, shall afford the other Party an adequate opportunity to make inquiries and representations regarding the application.
2. As soon as possible after an application for countervailing measures is accepted by the competent authorities of a Party and before the initiation of an investigation, if products of the other Party may be subject to such investigation, the other Party shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

ARTICLE 6.10: UNDERTAKINGS

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, that Party shall give written notice, which shall include information about the availability of undertakings, to the other Party.
2. In an anti-dumping investigation, where a Party's competent authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, that Party shall, to the extent possible, inform exporters of the other Party about the availability of undertakings and extend reasonable consideration to undertakings requested by the exporters of the other Party.
3. In a countervailing duty investigation, where a Party's competent authorities have made a preliminary affirmative determination of subsidisation and injury caused by such subsidisation, that Party shall inform the other Party and to the extent possible exporters of the other Party, about the availability of undertakings and extend reasonable consideration to undertakings requested by the other Party or the exporters of the other Party.

⁸ This is without prejudice to the position each Party takes in the WTO's Doha Development Agenda negotiations on Rules.

ANNEX 6-A
AGRICULTURAL SAFEGUARD MEASURES

Schedule of Korea

1. This Annex sets out those originating goods that may be subject to agricultural safeguard measures under Article 6.7, the trigger levels for applying such measures, and the maximum duty that may be applied each year for each such good:

(a) for beef as covered below;

Coverage: HSK provisions 0201.10.0000, 0201.20.1000, 0201.20.9000, 0201.30.0000, 0202.10.0000, 0202.20.1000, 0202.20.9000 and 0202.30.0000

Year	1	2	3	4	5	6
Trigger Level (MT)	154,584	157,676	160,829	164,046	167,327	170,673
Safeguard Duty (%)	40	40	40	40	40	30

Year	7	8	9	10	11	12
Trigger Level (MT)	174,087	177,569	181,120	184,742	188,437	192,206
Safeguard Duty (%)	30	30	30	30	24	24

Year	13	14	15	16
Trigger Level (MT)	196,050	199,971	203,970	NA
Safeguard Duty (%)	24	24	24	0

(b) for malt (not roasted) and malting barley as covered below;

Coverage: HSK provisions 1003.00.1000 and 1107.10.0000

Year	1	2	3	4	5	6
Trigger Level (MT)	147,486	150,436	153,444	156,513	159,644	162,836
Safeguard Duty (%)						
1003.00.1000(513%)	502	479	455	432	408	385
1107.10.0000(269%)	263	258	252	246	240	216

Year	7	8	9	10	11	12
Trigger Level (MT)	166,093	169,415	172,803	176,259	179,785	183,380
Safeguard Duty (%)						
1003.00.1000(513%)	361	338	315	291	268	244
1107.10.0000(269%)	207	199	190	181	139	127

Year	13	14	15	16
Trigger Level (MT)	187,048	190,789	194,605	NA
Safeguard Duty (%)				
1003.00.1000(513%)	221	197	174	0
1107.10.0000(269%)	115	103	91.5	0

(c) for maize (other) as covered below;

Coverage: HSK provision 1005.90.9000

Year	1	2	3	4	5	6
Trigger Level (MT)	33,053	33,714	34,388	35,076	35,777	36,493
Safeguard Duty (%)	313	298	283	268	253	190

Year	7	8
Trigger Level (MT)	37,223	NA
Safeguard Duty (%)	167	0

(d) for sugar as covered below;

Coverage: HSK provision 1701.99.0000

Year	1	2	3	4	5	6
Trigger Level (MT)	946	965	984	1,004	1,024	1,044
Safeguard Duty (%)	35	35	35	35	35	35

Year	7	8	9	10	11	12
Trigger Level (MT)	1,065	1,087	1,108	1,131	1,153	1,176
Safeguard Duty (%)	35	35	35	35	35	35

Year	13	14	15	16	17	18	19
Trigger Level (MT)	1,200	1,224	1,248	1,273	1,299	1,325	NA
Safeguard Duty (%)	35	35	35	35	35	35	0

2. For greater certainty, no agricultural safeguard measure may be applied or maintained after the date the safeguard duties set out above are zero.