

CHAPTER THREE TRADE REMEDIES

Section A: Safeguard Measures

Article 3.1: Definitions

For purposes of this Section:

bilateral transitional safeguard measure means a measure described in Article 3.2;

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;

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

substantial cause means a cause that is important and not less than any other 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 means, in relation to a particular good, the period from the date of entry into force of this Agreement until three years after the date of completion of tariff reduction or elimination in accordance with a Party's schedule of tariff commitments in Annex 2-A (Reduction or Elimination of Customs Duties).

Article 3.2: Application of a Bilateral Transitional Safeguard Measure

1. 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 that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat

thereof, to a domestic industry producing a like or directly competitive good in the territory of the importing Party, the Party may take a bilateral transitional safeguard measure in the form of:

- (a) suspending the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increasing the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the most-favored-nation (MFN) rate of duty applied at the time the bilateral transitional safeguard measure is taken; or
 - (ii) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

Article 3.3: Conditions and Limitations

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

2. A Party shall apply a bilateral 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, which are incorporated into and made part of this Agreement, *mutatis mutandis*.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Articles 4.2(a) and 4.2(b) of the Safeguards Agreement, which are incorporated into and made a part of this Agreement, *mutatis mutandis*.

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

5. Neither Party shall apply a bilateral 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 to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a bilateral 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.

6. A Party may apply a bilateral transitional safeguard measure more than once against the same good, if deemed necessary, provided that at least two years has elapsed since the completion of the period of application of a bilateral transitional safeguard measure on the import of that product.

7. Where the expected duration of the bilateral transitional safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.

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

Article 3.4: Provisional Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral transitional safeguard measure on a provisional basis pursuant to 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 such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2. Before a Party's competent authorities may make a preliminary determination, the Party shall publish a public notice setting out how interested parties, including importers and exporters, may obtain a non-confidential copy of the application requesting a provisional safeguard measure, and shall provide interested parties at least 20 days after the date it publishes the notice to submit

evidence and views regarding the application of a provisional measure. A Party may not apply a provisional measure until at least 45 days after the date its competent authorities initiate an investigation.

3. The applying Party shall notify the other Party before applying a provisional safeguard measure, and, on the request of the other Party, shall initiate consultations after applying the measure.

4. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 3.3.2 and 3.3.3.

5. The applying Party shall promptly refund any tariff increase if the investigation described in Article 3.3.2 does not result in a finding that the requirements of Article 3.2 are met. The duration of any provisional measure shall be counted as part of the period described in Article 3.3.5(b).

Article 3.5: Compensation

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

2. If the Parties are unable to agree on compensation through consultations under paragraph 1 within 30 days from the beginning of the consultations, the Party against whose originating good the bilateral transitional 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 under paragraph 2 shall terminate on the date the bilateral transitional safeguard measure terminates.

4. Any compensation shall be based on the total period of application of the bilateral transitional safeguard measure, which includes the provisional safeguard measures under Article 3.4.

5. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a bilateral transitional safeguard measure is in effect, provided that the bilateral transitional safeguard measure has been applied as a result of an absolute increase in imports and that the bilateral transitional safeguard measure conforms to the provisions of this Agreement.

Article 3.6: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of 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 GATT 1994 and the Safeguards Agreement. In taking measures under these WTO provisions, a Party shall, in accordance with WTO rules, exclude imports of an originating product from the other Party if such imports do not in and of themselves cause or threaten to cause serious injury.

2. Upon request of the other Party, the Party intending to take safeguard measures shall promptly provide written notification of all pertinent information on the initiation of a safeguard investigation, the preliminary determination, and the final finding of the investigation.

3. Neither Party shall apply, with respect to the same good, at the same time:

- (a) a bilateral transitional safeguard measure; and
- (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Section B: Anti-Dumping and Countervailing Duties

Article 3.7: General Provisions

1. Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing duties.

2. The Parties shall ensure, immediately after any imposition of provisional measures and in any case before the final determination, full and meaningful disclosure of all essential facts and considerations which form the basis for the

decision to apply measures, 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 interested parties shall be allowed sufficient time to make their comments.

3. 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 the timely response to its questionnaires. When the investigating Party finds 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 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 laws and regulations. The Parties may make preliminary and final determinations on the basis of the facts available pursuant to the Anti-Dumping Agreement and SCM Agreement.

Article 3.8: Notification and Consultations

1. Upon receipt by a Party’s competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, and no later than 15 days before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other

Party a meeting or other similar opportunities regarding the application, consistent with the Party's laws and regulations.

2. Upon receipt by a Party's competent authorities of a properly documented countervailing duty application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting to consult with its competent authorities regarding the application.

Article 3.9: Undertakings

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, the Party shall transmit to the other Party's embassy or competent authorities written information regarding the Party's procedures for requesting its authorities to consider an undertaking on price including the timeframes for offering and concluding any such undertaking, if practicable.

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, 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 suspension of the investigation without imposition of anti-dumping duties, through the means provided for in the Party's laws, regulations, and procedures.

3. In a countervailing duty investigation, where a Party's competent authorities have made a preliminary affirmative determination of subsidization and injury caused by such subsidization, 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 suspension of the investigation without imposition of countervailing duties, through the means provided for in the Party's laws, regulations, and procedures.

Article 3.10: Investigation after Termination Resulting from a Review

The Parties agree to examine, with special care, any application for initiation of an anti-dumping 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.

Section C: Committee on Trade Remedies

Article 3.11: Committee on Trade Remedies

1. The Parties hereby establish a Committee on Trade Remedies (hereinafter referred to as the “Committee”), comprising representatives at an appropriate level from relevant agencies of each Party who have responsibility for trade remedies matters, including anti-dumping, subsidies and countervailing measures, and safeguards issues.

2. The functions of the Committee shall include:

- (a) enhancing a Party’s knowledge and understanding of the other Party’s trade remedies laws, regulations, policies and practices;
- (b) overseeing the implementation of this Chapter;
- (c) improving cooperation between the competent authorities of the Parties having responsibility for matters on trade remedies;
- (d) providing a forum for the Parties to exchange information on issues relating to anti-dumping, subsidies and countervailing measures, and safeguards;
- (e) providing a forum for the Parties to discuss other relevant topics of mutual interest, including:
 - (i) international issues relating to trade remedies, including issues relating to the WTO Doha Round Rules negotiations; and
 - (ii) practices by the competent authorities of the Parties in anti-dumping and countervailing duty investigations such as the application of “facts available” and verification procedures; and
- (f) cooperating on any other matter that the Parties may agree on, as

necessary.

3. The Committee shall meet at least once a year and may meet more frequently as the Parties may agree.