

CHAPTER 3

TRADE REMEDIES

Section A General Provisions

Article 3.1 Definitions

For the purposes of this Chapter:

“bilateral safeguard measure” means a measure referred to in paragraph 2 of Article 3.6 (Application of a Bilateral Safeguard Measure);

“customs duty reduction or elimination” means any customs duty reduction or elimination in accordance with paragraph 2 of Article 2.5 (Treatment of Customs Duties – Trade in Goods);

“domestic industry” means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within 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 the good;

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

“threat of serious injury” means serious injury that is clearly imminent, in accordance with the provisions of Article 3.8 (Investigation Procedure). A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture, or remote possibility; and

“transition period” means, in relation to a good, the entry into force of this Agreement until five years after the completion of the customs duty reduction or elimination in relation to the good.

Section B
Anti-dumping and Countervailing Measures

Article 3.2
General Provision

Except as provided in this Section, each Party affirms its rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement.

Article 3.3
Investigations

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping investigation or a countervailing duty investigation with respect to imports from the other Party and before initiating an investigation, the importing Party shall provide written notification to the other Party of its receipt of the application.
2. Without prejudice to its other rights and obligations under the SCM Agreement, prior to initiating a countervailing duty investigation against imports from the other Party, the importing Party shall afford to the other Party a reasonable opportunity to consult with the aim of clarifying the situation on matters raised in the application and arriving at a mutually agreed solution. Any such consultations shall not unnecessarily delay or prevent a Party from proceeding expeditiously to initiate and conduct an investigation.
3. The Parties reaffirm their rights and obligations under Articles 6.2 and 6.3 of the AD Agreement and Article 12.2 of the SCM Agreement, including with respect to the rights of interested parties to present information orally and to defend their interests in the conduct of an anti-dumping investigation or a countervailing duty investigation.
4. Each Party shall ensure, before a final determination is made, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision whether to apply definitive measures in an anti-dumping investigation or a countervailing duty investigation. This is without prejudice to Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing, and allow interested parties sufficient time to defend their interests.

Article 3.4
Lesser-duty Rule

Each Party's investigating authority may consider whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or total amount of the subsidy or a lesser amount, in accordance with the Party's laws and regulations.

Section C
Global Safeguard Measures

Article 3.5
General Provisions and Transparency

1. Except as provided in this Section, nothing in this Agreement affects either Party's rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards.
2. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of any notification given to the WTO Committee on Safeguards under Article 12.1 of the Agreement on Safeguards.
3. To the extent permitted by the Agreement on Safeguards, when imposing safeguard measures, each Party shall endeavour to impose them in a way that least affects bilateral trade.

Section D
Bilateral Safeguard Measures

Article 3.6
Application of a Bilateral Safeguard Measure

1. If, as a result of customs duty reduction or elimination, 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 cause serious injury or threat of serious injury, the importing Party may apply a safeguard provided for in paragraph 2 to the extent necessary to prevent or remedy the serious injury and to facilitate the adjustment of the domestic industry.

2. In accordance with paragraph 1, the importing Party may apply one of the following bilateral safeguard measures:
 - (a) a suspension of the further customs duty reduction or elimination in relation to the good; or
 - (b) an increase in the rate of customs duty on the good to a level that does not exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty in effect at the time the measure is applied; or
 - (ii) the most-favoured-nation applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 3.7 **Duration and Scope**

1. A Party shall apply a bilateral safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry.
2. The period referred to in paragraph 1 shall not exceed two years, except that the period may be extended by no more than two years if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 3.8 (Investigation Procedure), that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.
3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is more than one year, the Party that applies the measure shall progressively liberalise it at regular intervals during its period of application.
4. Neither Party shall apply a bilateral safeguard measure on a good that has already been subject to a bilateral safeguard measure for a period of time equal to the duration of the previous safeguard or one year after its termination, whichever is longer.
5. When a Party terminates a bilateral safeguard measure on a good, the rate of customs duty for that good shall be the rate that would have been in effect in accordance with the Party's Schedule to Annex 2A (Tariff Commitments) but for the bilateral safeguard measure.

6. Neither Party shall apply or maintain a bilateral safeguard measure after the transition period.

Article 3.8 Investigation Procedure

1. A Party shall apply a bilateral safeguard measure only following an investigation by the Party's competent authority in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the Safeguards Agreement; to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. An investigation shall not exceed one year, but a Party may, in exceptional circumstances, and as mutually agreed with the other Party, extend the investigation for no more than the time necessary to complete the investigation. The other Party should not unreasonably withhold its agreement to the extension.

Article 3.9 Notification and Consultation

1. A Party shall provide written notice to the other Party immediately after:
 - (a) initiating an investigation referred to in Article 3.8 (Investigation Procedure);
 - (b) making a finding of serious injury or threat of serious injury caused by increased imports of an originating good of the other Party as a result of a customs duty reduction or elimination in relation to the good;
 - (c) taking a decision to apply or extend a bilateral safeguard measure; or
 - (d) taking a decision to modify a bilateral safeguard measure for progressive liberalisation.
2. A Party shall provide promptly to the other Party a copy of the public version of the report of its competent authority following the conclusion of its investigation as set out under Article 3.8 (Investigation Procedure).
3. The Party providing a written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

- (a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the good subject to the investigation (including its subheading in the Harmonized System), the importation period subject to the investigation, and the date of initiation of the investigation; and
 - (b) in the written notice referred to in subparagraphs 1(b) through (d), the evidence of the serious injury or the threat of serious injury caused by the increased imports of the good as a result of the customs duty reduction or elimination, a precise description of the good subject to the proposed bilateral safeguard measure (including its subheading in the Harmonized System), a precise description of the bilateral safeguard measure, and, as applicable, the proposed date of the introduction, extension, or modification of the bilateral safeguard measure, its expected duration, and the timetable for the progressive liberalisation of the measure. In the case of an extension of a bilateral safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided.
4. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information provided under subparagraph 3(b), exchanging views on the bilateral safeguard measure, and reaching an agreement on compensation set out in Article 3.11 (Compensation).

Article 3.10
Provisional Application of a Bilateral Safeguard Measure

1. In critical circumstances, a Party may apply a bilateral safeguard measure on a provisional basis if:
- (a) delay would cause damage to a domestic industry that would be difficult to repair; and
 - (b) the Party's competent authority makes a preliminary determination that there is clear evidence that imports of an originating good of the other Party have increased as the result of the customs duty reduction or elimination in relation to the good, and that those increased imports have caused or are threatening to cause serious injury.
2. Before applying a bilateral safeguard measure on a provisional basis the applying Party shall provide written notice to the other Party. Consultation between the Parties on the application of the measure on a provisional basis shall be initiated immediately after the measure is applied.

3. A bilateral safeguard measure applied on a provisional basis shall not be maintained for more than 200 days. The duration of a bilateral safeguard applied on a provisional basis shall be counted as part of the period described in paragraph 2 of Article 3.7 (Duration and Scope).
4. The increase in customs duty paid as a result of the application of the bilateral safeguard measure on a provisional basis shall be promptly refunded if the Party's competent authority, in the investigation referred to in paragraph 1 of Article 3.8 (Investigation Procedure), does not determine that the increase in imports of the good subject to the measure has caused or threatened to cause serious injury.

Article 3.11 Compensation

1. A Party applying a bilateral safeguard measure shall, in consultation with the other Party, provide mutually agreed 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 bilateral safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application or the extension of the bilateral safeguard measure.
2. If the consultations under paragraph 1 do not result in the Parties agreeing on trade liberalising compensation within 30 days, the Party against whose good the bilateral safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.
3. The Party against whose good the bilateral safeguard measure is applied shall notify the other Party in writing at least 30 days before it suspends concessions in accordance with paragraph 2.
4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the bilateral safeguard measure.

Article 3.12 Non-cumulation

1. Neither Party shall apply or maintain two or more of the following measures, with respect to the same good at the same time:

- (a) a bilateral safeguard measure;
- (b) a safeguard measure under Article XIX of GATT 1994 and the Agreement on Safeguards;
- (c) a safeguard measure under the *Agreement on Agriculture*, in Annex 1A to the WTO Agreement;
- (d) a product-specific safeguard under the Party's Schedule to Annex 2A (Tariff Commitments).

Article 3.13
Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under Section B or C.