

CHAPTER 8 TRADE REMEDIES

SECTION 8-A BILATERAL SAFEGUARDS

Article 8.1 Definitions

For the purposes of this Section:

- (a) **domestic industry** means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;
- (b) **provisional measure** means a provisional bilateral safeguard measure described in Article 8.5 (Provisional Measures);
- (c) **safeguard measure or safeguard measures** means a transitional bilateral safeguard measure or measures described in Article 8.2 (Application of Safeguard Measures);
- (d) **serious injury** means a significant overall impairment in the position of a domestic industry;
- (e) **threat of serious injury** means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility; and
- (f) **transition period**, in relation to a particular product, means the period from the entry into force of this Agreement until two years after the date on which the customs duty on that product is to be eliminated in accordance with Annex 3-1.

Article 8.2 Application of Safeguard Measures

During the transition period, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating product of a Party is being imported into the other Party's territory 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 like or directly competitive products, the other Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure consisting of:

- (a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the originating product from the date on which the action to apply the safeguard measure is taken; or
- (b) an increase of the rate of customs duty on the originating product to a level

not to exceed the lesser of:

- (i) the MFN applied rate of customs duty in effect on the date on which the action to apply the safeguard measure is taken; or
- (ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 8.3

Scope and Duration of Safeguard Measures

1. A Party shall apply a safeguard measure for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to one year provided that the conditions of this Chapter are met and that the safeguard measure continues to be applied to the extent necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The total period of a safeguard measure, including any extensions thereof, shall not exceed three years.

2. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a product shall terminate at the end of the transition period for such product. No new safeguard measure may be applied to a product after the end of the transition period.

3. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the safeguard measure shall progressively liberalise it at regular intervals during the application of the safeguard measure, including at the time of any extension.

4. A Party shall not apply a safeguard or provisional measure again on the same originating product.

5. An investigation shall be promptly terminated without any bilateral safeguard measure being applied if imports of the originating good represent less than eight % of total imports.

6. A Party shall not apply a safeguard or provisional measure on an originating product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards (hereinafter referred to as the "Safeguards Agreement"), or the WTO Agreement on Agriculture or Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of GATT 1994 (hereinafter referred to as the "Anti-dumping Agreement").

7. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, or the WTO Agreement on Agriculture or Article VI of GATT 1994 and the Anti-dumping Agreement, a measure on a product to which a safeguard measure is being applied, it shall terminate the safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, or the WTO Agreement on Agriculture or Article VI of GATT 1994 and the Anti-dumping Agreement.

8. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of customs duty in effect as set out in its Tariff Schedule as specified in Annex 3-1 on the date of termination as if the safeguard measure had never been applied.

Article 8.4 Investigation

1. A Party may apply or extend a safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the Safeguards Agreement.

2. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest.

3. An investigation shall as far as possible be completed within 180 days after being initiated but in no case shall exceed one year. A Party shall prior to the 180th day notify the other Party of the expected duration of the investigation, if the investigation is likely to take more than 180 days to complete. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

4. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings relating to all safeguard investigation proceedings.

5. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard investigation proceedings.

Article 8.5 Provisional Measures

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional measure, which shall take the form of the measure set out in paragraphs (a) or (b) of Article 8.2 (Application of Safeguard Measures), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating product of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious injury.

2. The duration of a provisional measure shall as far as possible not exceed 120 days, but shall not extend beyond 200 days, during which period the pertinent requirements of Articles 8.1 (Definitions) to 8.4 (Investigation) shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 8.3 (Scope and Duration of Safeguard Measures).

3. Any additional customs duties collected as a result of such provisional measure

shall be promptly refunded if the subsequent investigation referred to in Article 8.4 (Investigation) does not determine that increased imports of an originating product of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the provisional measure shall apply the rate of customs duty set out in its Tariff Schedule in Annex 3-1 as if the provisional measure had never applied.

Article 8.6

Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, upon:
 - (a) initiating an investigation under Article 8.4 (Investigation);
 - (b) making a finding of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty on the product pursuant to this Agreement;
 - (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
 - (d) taking a decision to progressively liberalise a safeguard measure previously applied.
2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under paragraph 1 of Article 8.4 (Investigation) immediately after it is available.
3. In the written notice referred to in paragraph 1(a), the reason for the initiation of the investigation, a precise description of an originating product subject to the investigation and its subheading or more detailed level of the HS, the period subject to the investigation and the date of initiation of the investigation shall be included.
4. In notifying under paragraphs 1(b) and (c), the Party applying or extending a safeguard measure shall also provide evidence of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement; a precise description of the product involved and its subheading or more detailed level of the HS; the details of the proposed safeguard measure; and the date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall to the extent possible provide additional information as the other Party may consider necessary.
5. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under paragraph 4, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in paragraph 1 of Article 8.7 (Compensation).

6. Where a Party applies a provisional measure referred to in Article 8.5 (Provisional Measures), on request of the other Party, consultations shall be initiated immediately after such application.

7. The provisions on notification in this Article shall not require a Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 8.7 Compensation

1. A Party proposing to apply a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure. Such consultations shall begin within 30 days of the decision to apply the safeguard measure and, in accordance with paragraph 5 of Article 8.6 (Notification and Consultation), shall take place prior to the application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of the consultations, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

4. The right of suspension referred to in paragraph 2 shall not be exercised for the first two years during which a bilateral safeguard measure is in effect, provided that the measure has been taken as a result of an absolute increase in imports.

Article 8.8 Dispute Settlement

1. Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 (Dispute Settlement). Any issue, difference or dispute between the Parties concerning the interpretation, implementation or application of any of the provisions of this Section shall be settled amicably through consultation and negotiation between the Parties pursuant to Article 8.6 (Notification and Consultation).

2. Any issue, difference or dispute between the Parties in respect of this Section, which cannot be resolved by the Parties pursuant to paragraph 1, shall be referred to the Joint Committee.

SECTION 8-B GLOBAL SAFEGUARDS

Article 8.9

Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement, and any other relevant provisions in the WTO Agreement, and their successors.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and their successors.
3. Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section.

SECTION 8-C ANTI-DUMPING MEASURES

Article 8.10 General Provisions

1. The Parties maintain their rights and obligations under Article VI of GATT 1994 and the Anti-Dumping Agreement.
2. Except otherwise stipulated in this Section, this Agreement does not confer any additional rights or obligations on the Parties with regard to the initiation and conduct of dumping investigations as well as the application of anti-dumping measures, referred to in paragraph 1.

Article 8.11 Lesser Duty

If a Party takes a decision to impose anti-dumping duties on the condition that the level of anti-dumping duty is sufficient to remove the injury, that Party is expected to impose a duty lesser than the dumping margin.

Article 8.12 Recommendations of the WTO Committee on Anti-Dumping Practices

Each Party may, in all investigations conducted against goods from the other Party, take into account the recommendations of the WTO Committee on Anti-Dumping Practices.

Article 8.13 Notification

1. After the initiation of an anti-dumping investigation, the initiating Party shall provide the notification required by Article 12.1.1 of Anti-Dumping Agreement in writing as soon as possible to the other Party.
2. The Parties shall make the notifications under Article 5.5 of Anti-Dumping Agreement and cover letters related to mentioned notifications in English.

Article 8.14
Contact Point

1. Both Parties shall make the required notifications referred to under Article 8.13 (Notification) to investigating authorities in addition to the Embassies.
2. In case of any dispute regarding the date of the notification related to paragraph 1, the notification date sent to the Embassies is deemed as binding.

Article 8.15
Dispute Settlement

Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section.

SECTION 8-D
COOPERATION IN PREVENTING CIRCUMVENTION

Article 8.16
Areas of Cooperation

1. The Parties shall endeavour to cooperate in preventing circumvention of trade remedies. The areas of cooperation are as follows:
 - (a) forwarding questionnaires and other documents to interested parties;
 - (b) exchanging information about firms and whole sector;
 - (c) exchanging trade data and similar information regarding products under circumvention investigation; and
 - (d) any other possible areas to be mutually agreed by the Parties.
2. Nothing in this Section shall be construed to require the other Party to furnish or allow access to confidential information pursuant to this Chapter the disclosure of which it considers would:
 - (a) be contrary to the public interest as determined by its laws;
 - (b) be contrary to any of its laws, including but not limited to, to those protecting personal data or financial affairs and accounts of individual customers of financial institution;
 - (c) impede law enforcement; and
 - (d) prejudice legitimate commercial interests, which may include competitive position of particular enterprises, public or private.
3. Where a Party provides information to the other Party in accordance with this Section and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the

purposes specified by the Party providing the information, and not disclose it without specific written permission of the Party providing the information.

4. Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section.

SECTION 8-E COUNTERVAILING MEASURES

Article 8.17 Countervailing Measures

1. Each Party shall retain its rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures.

2. Chapter 11 (Institutional Provisions) and Chapter 12 (Dispute Settlement) shall not apply to this Section.

SECTION 8-F COOPERATION

Article 8.18 Cooperation

1. The Parties shall explore opportunities for cooperation, collaboration and information exchange which is of mutual interest, consistent with the provisions of this Chapter. Such opportunities include technical assistance, capacity building and development of training programmes related to the administration of the trade remedy laws.

2. The Parties agree to cooperate to facilitate the implementation of this Chapter.