

**CHAPTER 3  
TRADE REMEDIES**

**SECTION 3-A  
ANTI-DUMPING AND COUNTERVAILING MEASURES**

**Article 3.1  
General Provisions**

1. The Parties affirm their rights and obligations arising under Article VI of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement and shall apply anti-dumping and countervailing measures in accordance with the provisions of this Chapter.
2. The Parties, recognising that anti-dumping and countervailing measures can be abused to obstruct trade, agree that:
  - (a) such measures 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 Party against which such a measure is to be imposed.
3. For the purpose of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

**Article 3.2  
Transparency and Information Exchange**

1. After receipt by a Party's competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, and at an early appropriate stage before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application.
2. After receipt by a Party's competent authorities of a properly documented countervailing duty application with respect to imports from the other Party, and at an early appropriate stage 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 the possibility to consult with its competent authorities regarding the application with a view to clarifying the factual situation and to arriving at a mutually agreed solution. The Parties shall endeavour to hold these consultations as soon as possible thereafter.
3. Both Parties shall ensure, immediately after any imposition of provisional measures and in any case before final determination is made, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement

and Article 12.4 of the SCM Agreement. Any disclosure shall be made in writing, and allow interested parties sufficient time to make their comments.

4. Each interested party shall be granted the possibility to be heard in order to express their views during trade remedies investigations.

### **Article 3.3 Lesser Duty Rule**

Should a Party decide to impose any anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, and it is desirable that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

### **Article 3.4 Exclusion from Bilateral Dispute Settlement and Mediation Mechanism**

The provisions of this Section shall not be subject to Chapter 17 (Dispute Settlement) of this Agreement.

## **SECTION 3-B COOPERATION IN PREVENTING CIRCUMVENTION**

### **Article 3.5 Areas of Cooperation**

1. The Parties will endeavour, within available resources, 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 relating to investigations; and
  - (c) 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; or

- (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 18 (Institutional, General and Final Provisions) and Chapter 17 (Dispute Settlement) shall not apply to this Section.

### **SECTION 3-C GLOBAL SAFEGUARD MEASURES**

#### **Article 3.6 Application of Global Safeguard Measures**

- 1. Each Party retains its rights and obligations under Article XIX of the GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. Unless otherwise provided in this Section, this Agreement does not confer any additional rights or impose any additional obligations on the Parties with regard to measures taken under Article XIX of the GATT 1994 and the Safeguards Agreement.
- 2. No Party shall apply, with respect to the same good, at the same time:
  - (a) a bilateral safeguard measure; and
  - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.
- 3. For the purposes of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.
- 4. At the request of the other Party, the Party intending to take safeguard measures shall provide immediately all pertinent information on the initiation of a safeguard investigation, the provisional findings and the final findings of the investigation, and imposition of a safeguard measure.
- 5. The provisions of this Section shall not be subject to the provisions of Chapter 17 (Dispute Settlement).

**SECTION 3-D  
BILATERAL SAFEGUARD CLAUSE**

**Article 3.7  
Definitions**

For the purposes of this Section:

“serious injury” and “threat of serious injury” shall be understood in accordance with Articles 4.1(a) and (b) of the Safeguards Agreement. To this end, Articles 4.1(a) and (b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*; and

“transition period” means a period of ten years from the entry into force of this Agreement.

**Article 3.8  
Application of Bilateral Safeguard Measure**

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, originating goods of a Party are 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, during the transition period only, adopt measures provided for in paragraph 2 in accordance with the conditions and procedures laid down in this Section.
2. The importing Party may take a bilateral safeguard measure which:
  - (a) suspends further reduction of the rate of customs duty on the good concerned provided for under Annex 2-A (Elimination of Customs Duties); or
  - (b) increases the rate of customs duty on the good concerned to a level which does not exceed the lesser of:
    - (i) the MFN 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 paragraph 2 of Article 2.6 (Reduction and/or Elimination of Customs Duties on Imports).

**Article 3.9**  
**Conditions and Limitations**

1. A Party shall notify the other Party in writing of the initiation of an investigation described in paragraph 2 and consult with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to:
  - (a) reviewing the information arising from the investigation;
  - (b) exchanging views on the measure; and
  - (c) exchanging preliminary views on compensation as set out in Article 3.11 (Compensation).
2. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authorities in accordance with Articles 3, 4.2(a) and 4.2(c) of the Safeguards Agreement and to this end, Articles 3, 4.2(a) and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
3. The determination referred to in Article 3.8 (Application of Bilateral Safeguard Measure) shall not be made unless the investigation demonstrates on the basis of objective evidence the existence of a causal link between increased imports from the other party and serious injury or threat thereof. In this respect, due consideration shall be given to other factors, including imports of the same product from other countries.
4. Each Party shall ensure that its competent authorities complete any such investigation within one year from the dates of its initiation.
5. Neither Party may apply a bilateral safeguard measure as set out in paragraph 1 of Article 3.8 (Application of Bilateral 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 two years 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 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 four years; or
  - (c) beyond the expiration of the transition period, except with the consent of the other Party.

6. No measure shall be applied again to the import of the same good during the transition period, unless a period of time equal to half of the period during which the safeguard measure was applied previously has elapsed.
7. 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 3.10 Provisional Measures**

1. 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 such imports cause serious injury, or threat thereof, to the domestic industry.
2. 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 3.9 (Conditions and Limitations). The Party shall promptly refund any tariff increases if the investigation described in paragraph 2 of Article 3.9 (Conditions and Limitations) does not result in a finding that the requirements of Article 3.8 (Application of 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 3.9 (Conditions and Limitations).
3. If a Party takes a provisional measure pursuant to this Article, the Party shall notify the other Party in writing prior to taking such measure and shall initiate consultations with the other Party immediately after such measure is taken.

### **Article 3.11 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 equivalent to the value of the additional duties expected to result from the safeguard measure. The Party shall provide an opportunity for such consultations no later than thirty 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 have begun, the Party whose goods are subject to the safeguard measure may suspend the application of substantially equivalent concessions on the goods of the Party applying the safeguard measure. The exporting Party shall notify the other Party in writing at least 30 days before suspending concessions under this paragraph.

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.