

CHAPTER 6

TRADE REMEDIES

Section 1: General Trade Remedies

Article 60 Definitions

For the purposes of this Chapter:

Safeguards Agreement means the *Agreement on Safeguards*, which is part of the WTO Agreement.

Article 61 General Provisions

1. The Parties maintain their rights and obligations under the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, the WTO *Agreement on Subsidies and Countervailing Measures*, Article XIX of GATT 1994 and the Safeguards Agreement.
2. The Parties agree to carry out any action taken pursuant to this Chapter in a transparent manner.

Article 62 Anti-Dumping

1. The Parties agree not to take any action pursuant to the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* in an arbitrary or protectionist manner.
2. Notwithstanding Article 61.1, as soon as possible following the acceptance of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of goods from the other Party, the Party that has accepted the properly documented application shall notify the relevant contact point in the other Party.

Article 63 Subsidies and Countervailing Measures

Neither Party shall introduce or maintain any form of export subsidy on any goods destined for the territory of the other Party.

Article 64 Global Safeguard Measures

1. A Party taking any measure pursuant to Article XIX of GATT 1994 and the Safeguards Agreement may exclude imports of an originating good from the other Party from the action if such imports are non-injurious.
2. A Party shall advise the relevant contact point of the other Party of any safeguard action on initiation of an investigation and the reasons for it.

Article 65 Cooperation and Consultation

1. The Parties recognise that there is a benefit in officials from both Parties cooperating and working to ensure each Party has a clear understanding of the processes and practices adopted by the other Party in the administration of actions taken pursuant to this Chapter.
2. Each Party shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.
3. A Party may at any time request consultations with the other Party on any matter arising from the operation or implementation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the request, unless the Parties mutually determine otherwise.

Section 2: Bilateral Safeguard Measures

Article 66 Definitions

For the purposes of this Section:

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;

provisional safeguard measure means a provisional safeguard measure described in Article 70;

safeguard measure means a safeguard measure described in Article 67.2;

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

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;

transition period means the 3 year period beginning on the date of entry into force of this Agreement; except that in the case of a product where the liberalization process lasts 5 or more years, the transition period shall be the period in which such a product reaches zero tariff according to the Schedule as set out in Annex 1 plus 2 years.

Article 67 Application of a Bilateral Safeguard Measure

1. If, as a result of the reduction or elimination of a customs duty provided for in this Agreement, a product benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic production and under such conditions as to cause serious injury or threat thereof to a domestic industry producing a like or directly competitive product, the importing Party may apply a safeguard measure described in paragraph 2, during the transition period.

2. If the conditions in paragraph 1 are met, a Party may, only to the extent as may be necessary to prevent or remedy serious injury, or threat thereof, and to facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the product provided for under this Agreement; or

- (b) increase the rate of customs duty on the product to a level not exceeding the lesser of:
 - (i) the MFN applied rate of duty in effect on the product on the day immediately preceding the date of entry into force of this Agreement; or
 - (ii) the MFN applied rate of customs duty in effect on the product on the date on which the safeguard measure is applied.

Article 68 Standards for a Bilateral Safeguard Measure

1. A Party may apply a safeguard measure for an initial period of no longer than 2 years. The period of a safeguard measure may be extended for a period not exceeding 1 year provided that the competent authorities of the importing Party have determined, in accordance with the procedures set out in Article 69, that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting. Regardless of its duration, a safeguard measure shall terminate at the end of the transition period. No new safeguard measure may be applied to a product after that date.

2. A Party shall not apply a safeguard measure or provisional safeguard measure again on a product which has been subject to such a measure for a period of time equal to that during which such a measure had been previously applied, provided that the period of non-application is at least 2 years.

3. Neither Party may apply a safeguard measure on a product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a product that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

4. On the termination of a safeguard measure, the rate of duty shall be the customs duty set out in the Party's Schedule to Annex 1 as if the safeguard measure had never been applied.

Article 69 Investigation Procedures and Transparency Requirements

1. The importing Party may apply a safeguard measure under this Section only following an investigation by its competent authorities in accordance with Article 3 of the Safeguards Agreement; and to this end, Article 3 of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. In determining whether increased imports of an originating product of the other Party have caused serious injury or are threatening to cause serious injury to a domestic industry, the competent authority of the importing Party shall follow the rules in Article 4.2 of the Safeguards Agreement; and to this end, Article 4.2 of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

Article 70 Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Articles 67, 68 and 69 shall be met. Such a provisional safeguard measure shall take the form of an increase in the rate of customs duty not exceeding the lesser of the rates in Article 67.2(b), which shall be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a safeguard measure.

Article 71 Notification

1. A Party shall promptly notify the other Party, in writing, on:
 - (a) initiating an investigation;
 - (b) taking a provisional safeguard measure;
 - (c) making a finding of serious injury or threat thereof caused by increased imports; and
 - (d) taking a decision to apply or extend a safeguard measure.
2. In making the notification referred to in paragraph 1(d), the Party applying a safeguard measure shall provide the other Party with all pertinent information, such as a precise description of the product involved, the proposed safeguard measure, the grounds for introducing such a safeguard measure, the proposed date of introduction and its expected duration. In the case of an extension of a safeguard measure, the written results of the determination required by Article 68.1, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting, shall also be provided.

3. 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 2, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 72.1.

4. Where a Party takes a provisional safeguard measure referred to in Article 70, on request of the other Party, consultations shall be initiated immediately after taking such a provisional safeguard measure.

Article 72 Compensation

1. A Party applying a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within 45 days after the application of the safeguard measure, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The right of suspension referred to in this paragraph shall not be exercised for the first year that a safeguard measure is in effect under the condition that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Chapter.

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

4. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.