

CHAPTER 6 TRADE REMEDIES

ARTICLE 37 Definitions

For the purposes of this Chapter:

- (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) **Safeguards Agreement** means the *Agreement on Safeguards*, which is part of the WTO Agreement;
- (c) **serious injury** means a significant overall impairment in the position of a domestic industry; and
- (d) **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.

ARTICLE 38 General Provisions

1. The Parties agree and reaffirm their commitments to abide by their rights and obligations under the *WTO Agreement on Implementation of Article VI of the GATT 1994*, the *WTO Agreement on Subsidies and Countervailing Measures*, Article XIX of the 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 39 Co-operation and Consultation

1. 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.
2. A Party may request consultations with the other Party on matters arising from the operation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within

forty-five (45) days of the request, unless the Parties mutually determine otherwise.

ARTICLE 40

Anti-Dumping

1. The Parties agree not to take any action pursuant to the WTO *Agreement on Implementation of Article VI of the GATT 1994* in an arbitrary or protectionist manner.
2. The Parties agree that 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 products from the other Party, the Party that has accepted the properly documented application shall inform the contact point of the other Party of the acceptance of the application.

ARTICLE 41

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 42

Global Safeguard Measures

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

ARTICLE 43

Bilateral Safeguard Measures

1. A Party shall have the right to initiate a bilateral safeguard measure on a product within the transition period for that product. The transition period for a product shall begin from the date of entry into force of this Agreement and end five (5) years from the date of completion of tariff elimination for that product.
2. A Party shall be free to take a bilateral safeguard measure, if, as a result of the reduction or elimination of a customs duty under this Agreement, an originating product 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

product from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive product. Such Party may apply a safeguard measure as set by increasing the tariff rate applicable to such originating product during the transition period to the WTO MFN tariff rate applied to such product at the time when the measure is taken.

3. In applying the bilateral safeguard measure, the Parties shall adopt the rules for the application of safeguard measures as provided for under the Safeguards Agreement with the exception of the quantitative restriction measures set out in Article 5 of the Safeguards Agreement, and Articles 9, 13 and 14 of the Safeguards Agreement. As such, all other provisions of the Safeguards Agreement shall, *mutatis mutandis*, be incorporated into and form an integral part of this Agreement.

4. Notwithstanding the above, no safeguard measure shall be applied against a product originating in a Party as long as its share of the total imports of the product concerned in the importing Party does not exceed 3%.

5. The safeguard measure may be maintained for an initial period of up to three (3) years and may be extended for a period not exceeding one (1) year. Notwithstanding the duration of a safeguard measure on a product, such measure shall terminate at the end of the transition period for that product.

6. Upon the termination of the measure, the tariff rate applicable to the originating product shall be the rate which would have been in effect but for the measure.

7. The Party applying a measure described in paragraph 1 shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in accordance with Article 8 of the Safeguards Agreement. The form of concessions shall have substantially equivalent trade effects or be equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation within forty-five (45) days in the consultations under paragraph 3, the Party against whose originating product the measure is applied may take action with respect to originating products of the other Party that has trade effects substantially equivalent to the measure. The Party taking such action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects, and in any event, only while the measure under paragraph 1 is being applied.

8. When applying a bilateral safeguard measure, a Party shall not have simultaneous recourse to the WTO safeguard measures referred to in Article 42 (Global Safeguard Measures).