CHAPTER 3
TRADE REMEDIES

Article 3.1
Subsidies and Countervailing Measures

1. The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO SCM Agreement, except as provided for in paragraphs 2 and 3.

2. Before initiating a countervailing investigation, a Party shall afford another Party concerned adequate opportunity for consultations with the aim of seeking a mutually acceptable solution. The consultations shall be held as soon as possible, but no less than 7 days from the receipt of the invitation. The invitation shall be communicated through channels that allow a record of the communication, including registered post, courier, or electronic transmission. A Party may continue an investigation if no mutually acceptable solution is reached within 21 days from the receipt of the invitation, unless the Parties concerned agree to continue the consultations.

3. If a Party takes a decision to impose a countervailing measure, that Party shall apply the "lesser duty" rule by imposing a duty which is less than the subsidy margin, when such lesser duty would be adequate to remove the injury to the domestic industry.

4. No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Article.

Article 3.2
Anti-dumping

1. Subject to paragraphs 2 to 12, the rights and obligations of the Parties in respect of the application of anti-dumping measures shall be governed by Article VI of the GATT 1994 and the WTO Anti-dumping Agreement.

2. The Parties agree not to take such measures in an arbitrary or protectionist manner. When a Party has accepted a properly documented application and before initiating an investigation under the WTO Anti-dumping Agreement, that Party shall notify in writing another Party whose goods are allegedly being dumped 10 days in advance of initiating the investigation and provide it with the full text of such application. As soon as possible and no later than 10 days from receipt of the notification of the receipt of the application, the exporting Party may request pre-initiation consultations with the importing Party, with the aim to clarify all possible concerns regarding the matters referred to in the application and arriving at a mutually acceptable solution. [2]

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[2] It is understood that investigations may be undertaken in parallel with ongoing consultations and that in the absence of a mutually acceptable solution each Party retains its rights and obligations under Article VI of the GATT 1994 and the WTO Anti-dumping Agreement, subject to paragraphs 3 to 12.

3. The existence of margin of dumping in an original investigation or in a review may normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions for the good as a whole.

4. When anti-dumping margins are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the WTO Anti-dumping Agreement, regardless of the comparison basis under Article 2.4.2 of the WTO Anti-dumping Agreement, all individual margins, whether positive or negative, shall be counted toward the average.

5. Where originating goods are subject to an anti-dumping investigation, the export price of such goods before adjustment for fair comparison, in accordance with Article 2.4 of the WTO Anti-dumping Agreement, shall be based on the value which appears in relevant documents, including the certificate of origin for the goods.

6. If the investigating authority of the importing Party determines that the value referred to in paragraph 5 is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed in accordance with Article 2.3 of the WTO Anti-dumping Agreement.

7. An individual margin of dumping for an exporter or producer shall be determined with respect to all export transactions during a certain time-period, subject to Article 2.4.2 of the WTO Anti-dumping Agreement, which in no case shall be less than six consecutive months.

8. If a Party takes a decision to impose an anti-dumping duty pursuant to paragraph 1, that Party shall apply the "lesser duty" rule by imposing a duty which is less than the dumping margin, when such lesser duty would be adequate to remove the injury to the domestic industry.

9. Where an anti-dumping investigation of an importing Party with respect to goods from another Party is terminated with negative final determination, that importing Party shall not initiate an investigation on the same goods within one year from the termination of the previous investigation.

10. Notwithstanding paragraph 9, the investigating authority of the importing Party may initiate an investigation in an exceptional circumstance. If an investigation is initiated in such a case, the authorities shall explain the exceptional circumstance which warrants initiation in the notice of initiation.

11. 5 years from the entry into force of this Agreement, the Parties shall review the provisions of this Article in the Joint Committee. The Parties shall thereafter conduct biennial reviews of the provisions in the Joint Committee.

12. No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Article.

Article 3.3
Global Safeguard Measures

1. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the WTO Safeguards Agreement, except that a Party taking a safeguard measure under Article XIX of the GATT 1994 and the WTO Safeguards Agreement may, to the extent consistent with its obligations under the WTO Agreements, exclude imports of an originating good from another Party if such imports are not a substantial cause of serious injury or threat thereof.

2. No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Article.

Article 3.4
Bilateral Safeguard Measure

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any goods originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive goods in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the extent necessary to remedy or prevent the injury, subject to paragraphs 2 to 14.

2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation.

3. A Party may apply a bilateral safeguard measure only following an investigation by its investigating authority pursuant to the following:

   (a) 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 interested parties and to submit their views, *inter alia*, as to whether or not the application of a bilateral safeguard measure would be in the public interest. The investigating authority shall publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law including a detailed analysis of the case under investigation as well as a demonstration of the relevance of factors examined;

(b) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the investigating authority shall evaluate all relevant factors of an objective and quantifiable nature, having a bearing on the situation of the domestic industry, in particular, the rate and amount of the increase in imports of the originating good concerned in absolute and relative terms, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment;

(c) the determination of serious injury, or threat thereof shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the goods concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports; and

(d) any information which is by nature confidential, or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the investigating authority. Such information shall not be disclosed without permission of the Party submitting it. A Party providing confidential information may be requested to furnish non-confidential summaries thereof or, if it indicates that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the investigating authority finds that a request for confidentiality is not warranted and if the Party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the investigating authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

4. A Party intending to take a bilateral safeguard measure shall immediately, and in any case before taking a measure, notify the exporting Party. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the goods involved, and the proposed measure, as well as the expected duration and timetable for the progressive removal of the measure. As soon as available, the estimated date of introduction or time-period for implementing the decision shall also be notified.

5. If the conditions in paragraph 1 are met, the importing Party may take a bilateral safeguard measure consisting in:

(a) suspending the further reduction of any rate of customs duty provided for under this Agreement for the goods; or

(b) increasing the rate of customs duty for the goods to a level not to exceed the lesser of:

(i) the most-favoured-nation rate of duty applied at the time the action is taken; or

(ii) the most-favoured-nation rate of duty applied on the day immediately preceding the entry into force of this Agreement.

6. Bilateral safeguard measures shall be taken for a period not exceeding 2 years. In very exceptional circumstances, measures may be taken up to a total maximum period of 3 years. The Party intending to extend the period beyond 2 years shall make a notification to the exporting Party containing the elements listed in paragraph 3 before taking a measure.

7. The Parties concerned shall allow for consultations. Within 30 days from the notification, the Parties concerned shall examine the information provided under paragraphs 3 and 5 in the Joint Committee in order to facilitate a mutually acceptable solution of the matter.

8. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify the exporting Party thereof. Within 30 days from the notification, the pertinent procedures set out in paragraphs 3 to 7 shall be initiated.

9. Any provisional bilateral safeguard measures shall be terminated within 200 days from its imposition. The period of application of any such provisional measure shall be counted as part of the duration of the measure and any extension thereof, set out in paragraph 5. Any tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

10. A Party that may be affected by a bilateral safeguard measure, or a provisional bilateral safeguard measure, shall be offered, by the Party proposing to apply the measure, adequate means of trade liberalising compensation in the form of concessions having substantially equivalent trade effects. Compensation shall be based on the total period of application of the bilateral safeguard measure.

11. If, within the 30-day period set out in paragraph 6, the Parties concerned are unable to agree on compensation offered by the Party proposing to apply the bilateral safeguard measure, in accordance with paragraph 9, the Party against which the bilateral safeguard measure is applied may take compensatory action having trade effects equivalent to the bilateral safeguard measure for the minimum period necessary to achieve the equivalent trade effects. The compensatory action shall be immediately notified to the Party applying the bilateral safeguard measure. Such compensation described in paragraph 9 shall not be provided if the measure described in paragraph 4 is applied for up to 2 years.

12. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

13. No bilateral safeguard measure shall be applied against a particular good while a safeguard measure referred to in Article 3.3 or under the WTO Agreement on Agriculture is being applied to that good. If such a global safeguard measure is applied against a particular good, any existing bilateral safeguard measure which is applied against that good shall be terminated.

14. 5 years from the entry into force of this Agreement, and thereafter biennially, the Parties shall review in the Joint Committee whether there is a need to maintain the possibility to apply bilateral safeguard measures among them. In these reviews, the Parties may decide to terminate the application of this Article.