

2. The Committee's functions shall include:

- (a) monitoring the implementation of this Chapter and Annexes 2-A, 2-B and 2-C;
- (b) promoting trade in goods between the Parties, including through consultations on accelerating and broadening the scope of tariff elimination and broadening of the scope of commitments on non-tariff measures under this Agreement, and on other issues as appropriate; as a result of these consultations, the Committee may, by decision, amend or expand the Annexes 2-A, 2-B and 2-C as required; and
- (c) addressing tariff and non-tariff measures to trade in goods between the Parties, and, if appropriate, referring such matters to the Trade Committee for its consideration.

## CHAPTER THREE

### TRADE REMEDIES

#### SECTION A

#### ANTI-DUMPING AND COUNTERVAILING MEASURES

##### ARTICLE 3.1

#### **General Provisions**

1. The Parties affirm their rights and obligations arising under Article VI of 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, the origin of the goods 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 no later than 15 days before initiating an investigation, that 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 no later than 15 days before initiating an investigation, that Party shall provide written notification to the other Party of its receipt of the application and shall 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 the final determination is made, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply those 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 shall 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 should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

## ARTICLE 3.4

**Consideration of Public Interest**

Neither Party shall apply anti-dumping or countervailing measures where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. Public interest shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organisations, to the extent they have provided relevant information to the investigating authorities.

## ARTICLE 3.5

**Exclusion from Bilateral Dispute Settlement and Mediation Mechanism**

The provisions of this Section shall not be subject to Chapter Fourteen (Dispute Settlement) and Chapter Fifteen (Mediation Mechanism).

## SECTION B

## GLOBAL SAFEGUARD MEASURES

## ARTICLE 3.6

**General Provisions**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. Unless otherwise provided for in this Section, 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.
2. No Party shall apply at the same time with respect to the same good both:
  - (a) a bilateral safeguard measure; and
  - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.
3. For the purposes of this Section, the origin of the goods shall be determined in accordance with the non-preferential rules of origin of the Parties.

## ARTICLE 3.7

**Transparency**

1. Notwithstanding Article 3.6 (General Provisions), at the request of the other Party, and provided that the latter has a substantial interest, a Party, when initiating a safeguard investigation or when intending to take safeguard measures, shall immediately provide, at least seven days in advance of the date of such initiation or imposition, *ad hoc* written notification of all pertinent information leading to the initiation of a safeguard investigation or the imposition of safeguard measures, including on the provisional findings and the final findings of the investigation, where relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.
2. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects their bilateral trade.
3. For the purposes of paragraph 2, if a Party considers that the legal requirements are met for the imposition of definitive safeguard measures, and it intends to apply such measures, it shall notify the other Party and give that Party the possibility of holding bilateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the importing Party may adopt the definitive safeguard measures. The possibility of consultations should also be offered to the other Party in order to exchange views on the information referred to in paragraph 1.

## ARTICLE 3.8

**Exclusion from Bilateral Dispute Settlement and Mediation Mechanism**

The provisions of this Section shall not be subject to Chapter Fourteen (Dispute Settlement) and Chapter Fifteen (Mediation Mechanism).

## SECTION C

## BILATERAL SAFEGUARD CLAUSE

## ARTICLE 3.9

**Definitions**

For the purposes of this Section:

- (a) 'serious injury' and 'threat of serious injury' shall be understood in accordance with subparagraphs 1(a) and 1(b) of Article 4 of the Safeguards Agreement and to that end, subparagraphs 1(a) and 1(b) of Article 4 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*; and
- (b) 'transition period' means a period of ten years from the entry into force of this Agreement.

## ARTICLE 3.10

**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 reductions of the rate of customs duty on the good concerned provided for under Annex 2-A; 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 pursuant to paragraph 2 of Article 2.6 (Reduction or Elimination of Customs Duties on Imports).

## ARTICLE 3.11

**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 and whether the conditions laid out in this Article are met;
  - (b) exchanging views on the measure and its appropriateness in light of the objectives of this Section to remove serious injury or threat thereof to domestic industry caused by an increase in imports as set out in paragraph 1 of Article 3.10 (Application of Bilateral Safeguard Measure); and
  - (c) exchanging preliminary views on compensation as set out in Article 3.13 (Compensation).
2. A Party shall only apply a bilateral safeguard measure following an investigation by its competent authorities in accordance with Articles 3, 4.2(a) and 4.2(c) of the Safeguards Agreement. To that 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 3.10 (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 the 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 of the date of its initiation.

5. Neither Party shall apply a bilateral safeguard measure as set out in paragraph 1 of Article 3.10 (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 that 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. In this case, paragraph 3 of Article 3.13 (Compensation) shall not apply.

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, would have been in effect but for the measure.

#### ARTICLE 3.12

##### **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 that such imports cause serious injury, or the threat thereof, to the domestic industry. 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 3.11 (Conditions and Limitations). The Party shall promptly refund any tariff increases if the investigation described in paragraph 2 of Article 3.11 (Conditions and Limitations) does not result in a finding that the requirements of Article 3.10 (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 3.11 (Conditions and Limitations).

2. If a Party takes a provisional measure pursuant to this Article, that 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 3.13

##### **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 in the form of concessions equivalent to the value of the additional duties expected to result from the safeguard measure. The Party applying a bilateral safeguard measure shall provide an opportunity for such consultations no later than 30 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 begin, the Party whose goods are subject to the safeguard measure may suspend the application of substantially equivalent concessions to 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.

#### CHAPTER FOUR

##### TECHNICAL BARRIERS TO TRADE

###### ARTICLE 4.1

###### **Objectives**

The objective of this Chapter is to facilitate and increase trade in goods between the Parties, by providing a framework to prevent, identify and eliminate unnecessary barriers to trade within the scope of the TBT Agreement.

###### ARTICLE 4.2

###### **Scope and Definitions**

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, as defined in Annex 1 of the TBT Agreement, which may affect trade in goods between the Parties, regardless of the origin of those goods.
2. Notwithstanding paragraph 1, this Chapter does not apply to:
  - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
  - (b) sanitary and phytosanitary measures, as defined in Annex A of the SPS Agreement, which are covered by Chapter Five of this Agreement.
3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply.

###### ARTICLE 4.3

###### **Affirmation of the TBT Agreement**

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, which is incorporated into and made part of this Agreement, *mutatis mutandis*.

###### ARTICLE 4.4

###### **Joint Cooperation**

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations and conformity assessment procedures, with a view to increasing the mutual understanding of their respective systems and to facilitating access to their respective markets.
2. The Parties shall seek to identify and develop regulatory cooperation initiatives appropriate for the particular issues or sectors, which may include but are not limited to:
  - (a) exchanging information and experiences on the preparation and application of their technical regulations and the use of good regulatory practice;
  - (b) simplifying, where appropriate, technical regulations, standards, and conformity assessment procedures;
  - (c) avoiding unnecessary divergence in their approaches to technical regulations and conformity assessment procedures, and working towards the possibility of convergence or alignment of technical regulations with international standards;
  - (d) encouraging cooperation between their respective bodies, whether public or private, that are responsible for metrology, standardisation, testing, certification and accreditation;
  - (e) ensuring efficient interaction of regulatory authorities at national, regional and international levels, for instance, by referring enquiries from a Party to the appropriate regulatory authorities; and