

CHAPTER TEN TRADE REMEDIES

Section A: Safeguard Measures

ARTICLE 10.1: APPLICATION OF A SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good 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 good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement;
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the most-favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and
 - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date this Agreement enters into force; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of duty to a level that, for each season, does not exceed the lesser of:
 - (i) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of application of the safeguard measure; and
 - (ii) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date this Agreement enters into force.

ARTICLE 10.2: CONDITIONS AND LIMITATIONS

1. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 2 and shall consult with the other Party as far in advance of applying a safeguard

measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

2. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

4. Each Party shall ensure that its competent authorities complete any such investigation within one year of its date of initiation.

5. Neither Party may apply a 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 one year 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 three years; or
- (c) beyond the expiration of the transition period, except with the consent of the other Party.

6. Neither Party may apply a safeguard measure more than once against the same good.

7. Where the expected duration of the safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.

8. When a Party terminates a safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex 2-B (Tariff Elimination), would have been in effect but for the measure.

ARTICLE 10.3: PROVISIONAL MEASURES

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a safeguard measure on a provisional basis pursuant to a preliminary determination by its competent authorities 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 constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.
2. Before a Party's competent authorities may make a preliminary determination, the Party shall publish a public notice in its official journal setting forth how interested parties, including importers and exporters, may obtain a non-confidential copy of the application requesting a provisional safeguard measure, and shall provide interested parties at least 20 days after the date it publishes the notice to submit evidence and views regarding the application of a provisional measure. A Party may not apply a provisional measure until at least 45 days after the date its competent authorities initiate an investigation.
3. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 10.2.2 and 10.2.3.
4. The Party shall promptly refund any tariff increases if the investigation described in Article 10.2.2 does not result in a finding that the requirements of Article 10.1 are met. The duration of any provisional measure shall be counted as part of the period described in Article 10.2.5(b).

ARTICLE 10.4: COMPENSATION

1. No later than 30 days after it applies a safeguard measure, a Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalizing 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 measure. The applying Party shall provide such compensation as the Parties mutually agree.
2. If the Parties are unable to agree on compensation within 30 days after consultations begin, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.
3. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions under paragraph 2 shall terminate on the date the safeguard measure terminates.

ARTICLE 10.5: GLOBAL SAFEGUARD ACTIONS

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if such imports are not a substantial cause of serious injury or threat thereof.
2. Neither Party may apply, with respect to the same good, at the same time:
 - (a) a safeguard measure; and
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

ARTICLE 10.6: DEFINITIONS

For purposes of Section A:

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

safeguard measure means a measure described in Article 10.1;

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

substantial cause means a cause that is important and not less than any other cause;

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; and

transition period means the ten-year period following the date this Agreement enters into force, except that for any good for which the Schedule to Annex 2-B (Tariff Elimination) of the Party applying the safeguard measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, **transition period** means the tariff elimination period for the good set out in that Schedule.

Section B: Antidumping and Countervailing Duties

ARTICLE 10.7: ANTIDUMPING AND COUNTERVAILING DUTIES

1. The Parties recognize the right to apply trade remedy measures consistent with Article VI of the GATT 1994, the AD Agreement, and the SCM Agreement, and the importance of promoting transparency in antidumping and countervailing duty proceedings and of ensuring the opportunity of all interested parties to participate meaningfully in such proceedings.
2. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.
3. Except for paragraphs 4 through 7, no provision of this Agreement shall be construed to impose any rights or obligations on a Party with respect to antidumping or countervailing duty measures. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.¹

Notification and Consultations

4. (a) Upon receipt by a Party's competent authorities of a properly documented antidumping application with respect to imports from the other Party, and 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 a meeting or other similar opportunities regarding the application, consistent with the Party's law.
- (b) Upon receipt by a Party's competent authorities of a properly documented countervailing duty application with respect to imports from the other Party, and 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 a meeting to consult with its competent authorities regarding the application.

Undertakings

5. (a) After a Party's competent authorities initiate an antidumping or countervailing duty investigation, the Party shall transmit to the other Party's embassy or competent authorities written information regarding the Party's procedures for requesting its authorities to consider an undertaking on price or, as appropriate, on quantity, including the time frames for offering and concluding any such undertaking.

¹ Although recourse to dispute settlement is not available with respect to paragraphs 4 through 7, the Parties reaffirm that those paragraphs create binding rights and obligations.

- (b) In an antidumping investigation, where a Party's authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the Party shall afford due consideration, and adequate opportunity for consultations, to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of antidumping duties, through the means provided for in the Party's laws and procedures.
- (c) In a countervailing duty investigation, where a Party's authorities have made a preliminary affirmative determination of subsidization and injury caused by such subsidization, the Party shall afford due consideration, and adequate opportunity for consultations, to the other Party and exporters of the other Party, regarding proposed undertakings on price or, as appropriate, on quantity, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the Party's laws and procedures.

Transparency and Due Process

6. In any segment of a proceeding in which an investigating authority of a Party determines to conduct an in-person verification of information provided by a responding party and pertinent to the calculation of an antidumping duty margin or the level of a countervailable subsidy, the investigating authority shall promptly notify the responding party of its intent to do so, and normally shall:

- (a) provide the responding party advance notice of the dates on which the investigating authority intends to conduct any such in-person verification of information;
- (b) prior to any such in-person verification, provide the responding party a document that sets forth the topics the responding party should be prepared to address during the verification and describes the types of supporting documentation the responding party should make available for review;
- (c) after the verification is completed prepare a written report describing the methods and procedures that it followed in carrying out the verification and the results of the verification; and
- (d) make the report available, consistent with the Party's law, to all interested parties in sufficient time for the interested parties to defend their interests in the segment of a proceeding.

7. An investigating authority of a Party shall, consistent with the Party's law, disclose, *inter alia*, for each interested party for whom the investigating authority has determined an individual rate of duty, the calculations used to determine the rate of dumping or countervailable subsidization and, if different, the calculations used to determine the rate of duty to be applied to imports of the interested party. The disclosure and explanation shall be in sufficient detail so as to permit the interested party to reproduce the calculations without undue difficulty. Such disclosure shall include, whether in electronic format (such as a computer program or spreadsheet) or in any other medium, a detailed explanation of the information the investigating authority used, the sources of that information, and any adjustments it made to the information when used in the calculations. The investigating authority shall provide interested parties adequate opportunity to respond to the disclosure.

Section C: Committee on Trade Remedies

ARTICLE 10.8: COMMITTEE ON TRADE REMEDIES

1. The Parties hereby establish a Committee on Trade Remedies, comprising representatives at an appropriate level from relevant agencies of each Party who have responsibility for trade remedies matters, including antidumping, subsidies and countervailing measures, and safeguards issues.
2. The functions of the Committee shall be to:
 - (a) enhance each Party's knowledge and understanding of the other Party's trade remedy laws, policies, and practices;
 - (b) oversee implementation of this Chapter, including compliance with paragraphs 4 through 7 of Article 10.7;
 - (c) improve cooperation between the Parties' agencies having responsibility for trade remedies matters;
 - (d) provide a forum for the Parties to exchange information on issues relating to antidumping, subsidies and countervailing measures, and safeguards;
 - (e) establish and oversee, for officials of both Parties, development of educational programs related to the administration of trade remedy laws; and
 - (f) provide a forum for the Parties to discuss other relevant topics of mutual interest including:

- (i) international issues related to trade remedies, including issues relating to the WTO Doha Round Rules negotiations;
 - (ii) practices by the Parties' competent authorities in antidumping and countervailing duty investigations, such as application of "facts available" and verification procedures; and
 - (iii) practices of a Party that may constitute industrial subsidies.
- 3. The Committee shall meet at least once a year and may meet more frequently as the Parties may agree.