

**CHAPTER 3  
TRADE REMEDIES**

**SECTION 3-A  
ANTI-DUMPING AND COUNTERVAILING MEASURES**

**Article 3.1  
Anti-Dumping, Subsidies and Countervailing Measures**

1. Each Party retains its rights and obligations under Article VI of the GATT 1994 and the Anti-Dumping Agreement and any amendment thereto. To this end, the provisions of the Anti-Dumping Agreement shall apply, *mutatis mutandis*, to the extent not specifically provided for in this Agreement.
2. Each Party retains its rights and obligations under Articles VI and XVI of GATT 1994 and the SCM Agreement, or any amendments thereto. To this end, the provisions of the SCM Agreement shall apply, *mutatis mutandis*, to the extent not specifically provided for in this Agreement.
3. 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 may be given to the interests of the Party against which such a measure is to be imposed.
4. For the purpose of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.

**Article 3.2  
Practices Relating to Anti-Dumping and Countervailing Duty Proceedings**

1. Upon receipt by a Party's investigating authorities of a properly documented anti-dumping or countervailing duty application with respect to imports from the other Party, the Party shall immediately provide written notification of its receipt of the application to the other Party.

2. In any proceeding in which a Party's investigating authorities determine to conduct an in-person verification of information that is provided by a respondent<sup>1</sup>, and that is pertinent to the calculation of anti-dumping duty margins or the level of a countervailable subsidy, the investigating authorities shall promptly notify each respondent of their intent, and:
  - (a) provide the respondent at least ten (10) working days' advance notice of the dates on which the investigating authorities intend to conduct an in-person verification of the information;
  - (b) at least five (5) working days prior to an in-person verification, provide to the respondent a document that sets out the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation to be made available for review; and
  - (c) after an in-person verification is completed, and subject to the protection of confidential information<sup>2</sup>, issue a written report that describes the methods and procedures followed in carrying out the verification and the extent to which the information provided by the respondent was supported by the documents reviewed during the verification. The report shall be made available to all interested parties in sufficient time for the parties to defend their interests.
3. A Party's investigating authorities shall maintain a public file for each investigation and review that contains:
  - (a) all non-confidential documents that are part of the record of the investigation or review; and
  - (b) to the extent feasible without revealing confidential information, non-confidential summaries of confidential information that is contained in the record of each investigation or review.

The public file and a list of all documents that are contained in the record of the investigation or review shall be made physically available for inspection and copying during the investigating authorities' normal business hours or electronically available for download<sup>3</sup>.

4. If, in an anti-dumping or countervailing duty action that involves imports from the other Party, a Party's investigating authorities determine that a timely response to a

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<sup>1</sup> For the purposes of this paragraph, "respondent" means a producer, manufacturer, exporter, importer, and, where appropriate, a government or government entity, that is required by a Party's investigating authorities to respond to an anti-dumping or countervailing duty questionnaire.

<sup>2</sup> For the purposes of this Chapter, "confidential information" includes information which is provided on a confidential basis and which is by its nature confidential, for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information.

<sup>3</sup> Charges for the copies, if any, are limited in amount to the approximate cost of the services rendered.

request for information does not comply with the request, the investigating authorities, to the extent practicable in light of time limits established to complete the anti-dumping or countervailing duty action, shall inform the interested party that submitted the response of the nature of the deficiency and, provide that interested party with an opportunity to remedy or explain the deficiency. If that interested party submits further information in response to that deficiency and the investigating authorities find that the response is not satisfactory, or that the response is not submitted within the applicable time limits, and if the investigating authorities disregard all or part of the original and subsequent responses, the investigating authorities shall explain in the determination or other written document the reasons for disregarding the information.

5. Before a final determination is made, a Party's investigating authorities shall inform all interested parties of the essential facts that form the basis of the decision whether to apply definitive measures. Subject to the protection of confidential information, the investigating authorities shall use any reasonable means to disclose the essential facts, which includes a report summarising the data in the record, a draft or preliminary determination or some combination of those reports or determinations. Each interested party shall be granted the opportunity and sufficient time to review and respond to the disclosure of essential facts.

### **Article 3.3**

#### **Exemption from Investigation after Termination**

Where an anti-dumping investigation in respect of goods from the other Party is terminated with negative final determination, no investigation shall be initiated on the same goods by the importing Party within one (1) year from the date of termination of the previous investigation, unless the pre-initiation examination indicates that the circumstances have changed.

### **Article 3.4**

#### **Lesser Duty Rule**

Should a Party decide to impose any anti-dumping or countervailing duty, and such lesser duty would be adequate to remove the injury, the amount of final duty imposed shall not exceed that lesser duty.

### **Article 3.5**

#### **Consideration of Economic Interest**

Anti-dumping or countervailing measures shall not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the economic interest of the Party conducting the investigation to apply such measures. Economic 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.

## **SECTION 3-B CO-OPERATION**

### **Article 3.6 Areas of Co-operation**

1. The Parties will endeavour, within available resources, to co-operate in preventing circumvention of trade remedies. The areas of co-operation are as follows:
  - (a) forwarding questionnaires and other documents to interested parties;
  - (b) exchanging information relating to investigations; and
  - (c) any other possible areas to be mutually agreed by the Parties.
2. This Section shall not be construed to require the other Party to furnish or allow access to confidential information pursuant to this Chapter, the disclosure of which it considers would:
  - (a) be contrary to the public interest as determined by its laws;
  - (b) be contrary to any of its laws, including but not limited to, those protecting personal data or financial affairs and accounts of individual customers of financial institutions;
  - (c) impede law enforcement; or
  - (d) prejudice legitimate commercial interests, which may include competitive position of particular enterprises, public or private.
3. Where a Party provides information to the other Party in accordance with this Section and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without specific written permission of the Party providing the information.
4. Chapter 16 (Dispute Settlement) and Article 17.1 (Joint Committee), Article 17.2 (Committees and Working Groups) and Article 17.4 (Decision-Making) of Chapter 17 (Institutional, General and Final Provisions) shall not apply to this Section.

**SECTION 3-C  
GLOBAL SAFEGUARD MEASURES**

**Article 3.7  
Application of Global Safeguard Measures**

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. To this end, the provisions of the Safeguards Agreement shall apply, *mutatis mutandis*, to the extent not specifically provided for in this Agreement.
2. No Party shall apply, with respect to the same good, at the same time:
  - (a) a bilateral safeguard measure; and
  - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.
3. For the purposes of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties.
4. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects their bilateral trade.
5. For the purposes of paragraph 4 of this Article, the Party intending to apply the definitive safeguard measures may notify the other Party and give the possibility to hold bilateral consultations.
6. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of the notification given to the WTO Committee on Safeguards under Article 12.1(a) of the Safeguards Agreement.

**SECTION 3-D  
BILATERAL SAFEGUARD MEASURES**

**Article 3.8  
Definitions**

For the purposes of this Section:

- (a) “**serious injury**” means a significant overall impairment in the position of a domestic industry;
- (b) “**threat of serious injury**” means a serious injury that is clearly imminent and

shall be understood in accordance with Article 4.1(b) of the Safeguards Agreement;

- (c) "**domestic industry**" means the producers as a whole of the like or directly competitive products, operating within the territory of a Party or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;
- (d) "**bilateral safeguard measure**" means a safeguard measure described in this Section.
- (e) "**transitional safeguard period**" means, in relation to a particular good, the period from the entry into force of this Agreement until three years after the customs duty on that good is to be fully eliminated in accordance with that Party's schedule of tariff commitments set out in Annex 2-A (Elimination of Customs Duties);
- (f) "**Competent Authority**" means the investigating authorities as determined by each Party.

### **Article 3.9** **Application of Bilateral Safeguard Measures**

1. Only during the transitional safeguard period, 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 adopt measures provided for in paragraph 2 of this Article 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 reduction of the rate of customs duty on the good concerned provided for under Annex 2-A (Elimination of Customs Duties); 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 MFN applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

**Article 3.10**  
**Conditions and Limitations on the Imposition of Bilateral Safeguard Measures**

1. The following conditions and limitations shall apply to an investigation or a measure described in Article 3.9 (Application of Bilateral Safeguard Measures):
  - (a) A Party shall immediately deliver written notice to the other Party upon:
    - (i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
    - (ii) making a finding of serious injury or threat thereof caused by increased imports; and
    - (iii) taking a decision to apply or the imposition or the extension of bilateral safeguard measures;
  - (b) in making the notification referred to in sub-paragraph (a) above, the Party proposing to apply a bilateral safeguard measure shall provide the other Party with all pertinent information, as applicable;
  - (c) a Party proposing to apply a measure shall provide an opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable with a view to reviewing the information arising from the investigation, and exchanging views on the measure including preliminary views on compensation as set out in Article 3.12 (Compensation).
2. A Party shall apply a bilateral safeguard measure only following an investigation by its Competent Authorities in accordance with Article 3, Article 4.2(a) and Article 4.2(c) of the Safeguards Agreement and to this end, Article 3, Article 4.2(a) and Article 4.2(c) of the Safeguards Agreement shall apply, *mutatis mutandis*, to the extent not specifically provided for in this Agreement.
3. The determination referred to in Article 3.9 (Application of Bilateral Safeguard Measures) 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 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 (1) year from the date of its initiation.
5. Neither Party may apply a bilateral safeguard measure as set out in paragraph 1 of Article 3.9 (Application of Bilateral Safeguard Measures):

- (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 (2) years, except that the period may be extended up to an additional two (2) years (provided that the total period of application of a bilateral safeguard measure, including the period of initial application and any extension thereof, shall not exceed four (4) years), if the Competent Authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard 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; or
  - (c) no measure shall be applied in the first year after the commencement of the tariff reduction or tariff elimination comes into force as negotiated under this Agreement.
6. No bilateral safeguard measure shall be applied again to the import of the same good during the transitional safeguard period, unless a period of time equal to half of the period during which the bilateral safeguard measure was applied previously has elapsed.
7. In accordance with Article 3.7 (Application of Global Safeguard Measures), no bilateral safeguard measure shall be taken against a good while a global safeguard measure in respect of that good is in place; in the event that a global safeguard measure is taken in respect of a good, any existing bilateral safeguard measure which is taken against that good shall be terminated.
8. Upon the termination of a bilateral safeguard measure, the rate of duty shall be the rate which would have been in effect, as per the reduction schedule, but for the action.
9. No bilateral safeguard measure shall be taken beyond the expiration of the transitional safeguard period.

### **Article 3.11 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 as per Article 3.9 (Application of Bilateral Safeguard Measures) of this Section on a provisional basis, without complying with the procedural requirements on consultations as per sub-paragraph 1(c) of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures)], 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 such imports cause serious injury, or threat thereof, to the domestic industry.



2. The duration of any provisional measure shall not exceed two hundred (200) days, during which time the Party shall comply with the requirements of paragraphs 2 and 3 of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures). The Party shall promptly refund any tariff increases if the investigation described in paragraph 2 of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures) does not result in a finding that the requirements of Article 3.9 (Application of Bilateral Safeguard Measures) are met. The duration of any provisional measure shall be counted as part of the period prescribed by sub-paragraph 5(b) of Article 3.10 (Conditions and Limitations on the Imposition of Bilateral Safeguard Measures).
3. If a Party takes a provisional measure pursuant to this Article, the Party shall, as far as practicable, 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 3.12 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 equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The Party applying the measure shall provide an opportunity for such consultations no later than thirty (30) days after the application of the bilateral safeguard measure.
2. If the consultations under paragraph 1 of this Article do not result in an agreement on trade liberalising compensation within thirty (30) days after the consultations have begun, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of substantially equivalent concessions on the goods of the Party applying the bilateral safeguard measure. The exporting Party shall notify the other Party in writing at least thirty (30) days before suspending concessions under this paragraph.
3. The suspension of concessions as set out in paragraph 2 of this Article shall not be applicable if the bilateral safeguard measure is applied for:
  - (a) not more than two (2) years; or
  - (b) not more than three (3) years in consultation with the other Party, provided that the Party imposing the bilateral safeguard measure provides to the other Party substantial evidence that the industry concerned is adjusting during the first two years;

and provided that the bilateral safeguard measure conforms to the provisions of this Agreement.