

CHAPTER 6 TRADE REMEDIES

Section A: General Trade Remedies

ARTICLE 6.1: ANTI-DUMPING AND COUNTERVAILING MEASURES

Each Party retains its rights and obligations under *the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994)* and the *Agreement on Subsidies and Countervailing Measures* contained in Annex 1A to the WTO Agreement.

ARTICLE 6.2: GLOBAL SAFEGUARD MEASURES

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the *Agreement on Safeguards* contained in Annex 1A to the WTO Agreement.
2. A Party proposing to apply or extend a global safeguard measure shall provide adequate opportunity for prior consultations with the other Party. The prior consultations shall take place as soon as possible.

Section B: Bilateral Safeguard Measures

ARTICLE 6.3: DEFINITIONS

For the purposes of this Chapter:

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

bilateral safeguard measure means a measure described in Article 6.4;

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

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;

transition period means, in relation to a particular product, the five-year period from the date of entry into force of this Agreement. In the case of a product where the liberalisation progress as set out in Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) lasts five or more years, the transition period shall be extended to the date on which such a product reaches zero tariff in accordance with the Schedule in that Annex plus two years; and

WTO Safeguards Agreement means *the Agreement on Safeguards* contained in Annex 1A to the WTO Agreement.

ARTICLE 6.4: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

1. During the transition period only, if as a result of the reduction or elimination of a customs duty provided for in this Agreement, any product originating in a Party is 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 domestic industry producing a like or directly competitive product, the importing Party may apply a bilateral safeguard measure described in paragraph 2 of this Article.

2. If the conditions in paragraph 1 are met, a Party may, only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment:

(a) suspend the further reduction of any rate of customs duty on the product provided for under this Agreement; or

(b) increase the rate of customs duty on the product to a level not exceeding the lesser of:

(i) the MFN applied rate of customs duty in effect on the product on the day immediately preceding the date of entry into force of this Agreement; or

(ii) the MFN applied rate of customs duty in effect on the product on the date on which the bilateral safeguard measure is applied.

ARTICLE 6.5: SCOPE AND DURATION OF BILATERAL SAFEGUARD MEASURES

1. Neither Party may apply or maintain 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; or

(b) for a period exceeding two years; except that the period may be extended by up to two years, if the competent authorities of the applying Party determine, in conformity with the procedures set out in this Chapter, 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. Regardless of its duration, such measure shall terminate at the end of the transition period.

2. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application. A measure extended shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

3. A Party shall not apply any bilateral safeguard measure again on a product which has been subject to such a bilateral safeguard measure for a period of time equal to that during which the previous bilateral safeguard measure had been applied, provided that the period of non-application is at least two years. However, no bilateral safeguard measure may be applied more than twice on the same product.

4. Neither Party may apply any bilateral safeguard measure on a product that is subject to a measure that the Party has applied pursuant to Article XIX of the GATT 1994 and the WTO Safeguards Agreement, and neither Party shall maintain any bilateral safeguard measure on a product that becomes subject to a measure that the Party imposed pursuant to Article XIX of the GATT 1994 and the WTO Safeguards Agreement.

5. On the termination of a bilateral safeguard measure, the Party that applied the bilateral safeguard measure shall apply the rate of customs duty set out in its schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) on the date of termination as if the bilateral safeguard measure had never been applied.

ARTICLE 6.6: INVESTIGATION PROCEDURES AND TRANSPARENCY REQUIREMENTS

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the WTO Safeguards Agreement; and to this end, Articles 3 and 4.2 of the WTO Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Each Party shall ensure that its competent authorities complete any such investigation under paragraph 1 within one year after its initiation.

ARTICLE 6.7: PROVISIONAL MEASURES

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party concerned may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused, or are threatening to cause, serious injury to a domestic industry.
2. The duration of a provisional bilateral safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Article 6.3 (Definitions), 6.4 (Application of A Bilateral Safeguard Measure), 6.5 (Scope and Duration on Bilateral Safeguard Measures) and 6.6 (Investigation Procedures and Transparency Requirements) shall be met. The duration of such provisional bilateral safeguard measures shall be counted as part of the final safeguard measure.
3. The Party intending to apply a provisional bilateral safeguard measure shall before its application, immediately notify the other Party, and shall initiate consultations after applying such a measure.
4. Such a provisional bilateral safeguard measure should take the form of an increase in the customs duty not exceeding the lesser of the rates in Article 6.4.2 (b). Any customs duty collected shall be promptly refunded if the subsequent investigation referred to in Article 6.6.1 determines that increased imports have not caused or threatened to cause serious injury to a domestic industry.

ARTICLE 6.8: NOTIFICATION AND CONSULTATION

1. A Party shall immediately notify the other Party in writing on:
 - (a) initiating a bilateral safeguard investigation;
 - (b) making a finding of serious injury or threat thereof caused by increased imports;
 - (c) taking a decision to apply or extend a bilateral safeguard measure; and
 - (d) taking a decision to liberalise a bilateral safeguard measure previously applied in accordance with Article 6.5.2.
2. In making the notifications referred to in paragraphs 1(b) and paragraph 1(c), the Party applying a bilateral safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat

thereof caused by increased imports, a precise description of the product involved, the proposed bilateral safeguard measure, the grounds for introducing such a bilateral safeguard measure, the proposed date of introduction and its expected duration and timetable for progressive liberalization. In the case of an extension of a bilateral safeguard measure, the written results of the determination required by Article 6.6 (Investigation Procedures and Transparency Requirements), including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting shall also be provided.

3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 6.9.1.

4. A party shall provide to the other Party a copy of the public version of the report of its competent authorities required in accordance with Article 6.6 (Investigation Procedures and Transparency Requirements) as soon as it is available.

ARTICLE 6.9: COMPENSATION

1. A party applying a bilateral safeguard measure may, in consultation with the other Party, provide to the other Party mutually agreed 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 bilateral safeguard measure. Such consultations shall begin within 30 days of the application of the bilateral safeguard measure.

2. If the Parties are unable to reach an agreement on compensation within 30 days of the consultation commencing, the exporting Party may consider the possibility to suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concession under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the bilateral safeguard measure.