

APPENDIX 3

NEW CHAPTER 6 (TRADE REMEDIES)

CHAPTER 6 TRADE REMEDIES

ARTICLE 1 Definitions

For the purposes of this Chapter:

- (a) **Anti-Dumping Agreement** means the *Agreement on Implementation of Article VI of the GATT 1994*, which is part of the WTO Agreement;
- (b) **domestic industry** means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;
- (c) **Safeguards Agreement** means the *Agreement on Safeguards*, which is part of the WTO Agreement;
- (d) **SCM Agreement** means the *Agreement on Subsidies and Countervailing Measures*, which is part of the WTO Agreement;
- (e) **serious injury** means a significant overall impairment in the position of a domestic industry;
- (f) **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
- (g) **working days** means calendar days other than Saturdays, Sundays and public holidays of the Party initiating an anti-dumping investigation.

ARTICLE 2 General Provisions

1. The Parties agree and reaffirm their commitments to abide by their rights and obligations under the Anti-Dumping Agreement, the SCM Agreement, Article XIX of the GATT 1994, and the Safeguards Agreement.
2. The Parties agree to carry out any action taken pursuant to this Chapter in a transparent manner.

ARTICLE 3 Cooperation and Consultation

1. Each Party shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.
2. A Party may request consultations with the other Party on matters arising from the operation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within forty-five (45) days of the request, unless the Parties mutually determine otherwise.

ARTICLE 4 Anti-Dumping

1. Each Party agrees to strictly abide by the Anti-Dumping Agreement in any anti-dumping proceedings against any product of the other Party.
2. The Parties agree to observe the following practices in anti-dumping cases between them:
 - (a) Without prejudice to the relevant provisions of the Anti-Dumping Agreement regarding notification at the initiation stage to the exporting WTO Member whose export product is under investigation, following the acceptance of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of products from the other Party, the Party that has accepted the properly documented application should, at least seven (7) days in advance of the date of initiation of the investigation procedure, notify the other Party.
 - (b) The investigating authority of a Party shall, in the public notice on the initiation of an investigation, give interested parties a period of no less than twenty (20) days after the date of initiation to notify the latter's intention to participate in the proceeding, to provide the relevant information¹ and to comment on the information contained in the notice of initiation, such as the representativeness of the applicant, the scope of the product under consideration and the evidence given to justify the initiation of the investigation. The investigating authority shall take due account of such comments. Within ten (10) working days after the expiry of the aforementioned period, the investigating authority shall make available the model questionnaires to the other Party and other interested parties (and notify them if the model questionnaires are published on the Internet).

¹ Information may include, but not be limited to: name, address, legal representative, contact details and contact person of the interested party, total volume and value of the product under investigation exported to the investigating Party during the investigation period, and the official seal of the interested party or signature of the legal representative.

- (c) A Party's investigating authority shall take due account of any difficulties experienced by one or more exporters of the other Party in supplying information requested and provide any assistance practicable; on request of an exporter of the other Party, a Party's investigating authority shall make available the timeframes, procedures and, subject to that Party's laws or regulations relating to confidential information, any documents necessary for the offering of an undertaking.

ARTICLE 5
Subsidies and Countervailing Measures

1. Each Party agrees to strictly abide by the SCM Agreement in any countervailing proceedings against any product of the other Party.
2. Neither Party shall introduce or maintain any form of export subsidy on any goods destined for the territory of the other Party.

ARTICLE 6
Global Safeguard Measures

1. A Party taking any measure pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement may exclude imports of an originating product from the other Party from the action if such imports are non-injurious.
2. A Party shall advise the relevant contact points of the other Party of any safeguard action on the initiation of an investigation and the reasons for it.

ARTICLE 7
Bilateral Safeguard Measures

1. A Party shall have the right to initiate a bilateral safeguard measure on a product within the transition period for that product. The transition period for a product shall begin from the date of entry into force of this Agreement and end five (5) years from the date of completion of tariff elimination for that product.
2. A Party shall be free to take a bilateral safeguard measure, if, as a result of the reduction or elimination of a customs duty under this Agreement, an originating product 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 product from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive product. Such Party may apply a safeguard measure as set by increasing the tariff rate applicable to such originating product during the transition period to the WTO MFN tariff rate applied to such product at the time when the measure is taken.

3. In applying the bilateral safeguard measure, the Parties shall adopt the rules for the application of safeguard measures as provided for under the Safeguards Agreement with the exception of the quantitative restriction measures set out in Article 5 of the Safeguards Agreement, and Articles 9, 13 and 14 of the Safeguards Agreement. As such, all other provisions of the Safeguards Agreement shall, *mutatis mutandis*, be incorporated into and form an integral part of this Agreement.

4. Notwithstanding the above, no safeguard measure shall be applied against a product originating in a Party as long as its share of the total imports of the product concerned in the importing Party does not exceed 3%.

5. The safeguard measure may be maintained for an initial period of up to three (3) years and may be extended for a period not exceeding one (1) year. Notwithstanding the duration of a safeguard measure on a product, such measure shall terminate at the end of the transition period for that product.

6. Upon the termination of the measure, the tariff rate applicable to the originating product shall be the rate which would have been in effect but for the measure.

7. The Party applying a measure described in paragraph 1 shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in accordance with Article 8 of the Safeguards Agreement. The form of concessions shall have substantially equivalent trade effects or be equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation within forty-five (45) days in the consultations under paragraph 3, the Party against whose originating product the measure is applied may take action with respect to originating products of the other Party that has trade effects substantially equivalent to the measure. The Party taking such action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects, and in any event, only while the measure under paragraph 1 is being applied.

8. A Party shall not impose a bilateral safeguard measure in addition to any global safeguard measures on the same product pursuant to the Safeguards Agreement.