

## **CHAPTER Y: TRADE REMEDIES**

### **SECTION X: ANTI-DUMPING AND COUNTERVAILING DUTIES**

#### **Article 1: General Provisions**

1. The Parties affirm their rights and obligations arising from Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, and from the WTO Agreement on Subsidies and Countervailing Measures.
2. The Parties, recognizing that anti-dumping and countervailing measures can be abused to obstruct trade, agree that:
  - (i) trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system; and
  - (ii) careful consideration should be given to the interests of the Party against whom such measure is to be imposed.
3. For the purpose of this Section, origin shall be determined in accordance with Article 1 of the WTO Agreement on Rules of Origin.

#### **Article 2: Transparency**

1. Both Parties agree that trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.
2. Both Parties shall ensure, immediately after any imposition of provisional measures and in any case before final determination is made, full and meaningful disclosure of **all** essential facts and considerations which form the basis for the decision to apply measures. This is without prejudice to Article 6.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.4 of the WTO Agreement on Subsidies and Countervailing Measures. Disclosures shall be made in writing, and allow interested parties sufficient time to make their comments.
3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party shall be granted the possibility to be heard in order to express their views during trade remedies investigations.

#### **Article 3: Consideration of Public Interest**

Anti-dumping or countervailing measures may 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 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 organizations, to the extent they have provided relevant information to the investigating authorities.

#### **Article 4: Lesser duty rule**

Should a Party decide to impose any anti-dumping or countervailing duty, that party shall endeavor to ensure that the amount of such duty shall not exceed the margin of dumping or countervailable subsidy, and it should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

#### **Article 5: Exclusion from mediation and bilateral dispute settlement mechanism**

The provisions of this Section shall not be subject to the Mediation and Dispute Settlement provisions of this Agreement.

### **SECTION XX: GLOBAL SAFEGUARD MEASURES**

#### **Article 1: General provisions**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.
2. No Party shall apply with respect to the same good at the same time:
  - (i) a bilateral safeguard measure under section XY of this Agreement; and
  - (ii) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.
3. For the purpose of this Section, origin shall be determined in accordance with Article 1 of the WTO Agreement on Rules of Origin.

#### **Article 2: Transparency**

1. Notwithstanding Article 1, at the request of the other Party and provided the latter has a substantial interest, once a global safeguard investigation has been initiated, the Party initiating that safeguard investigation or intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information leading to the initiation of a global safeguard investigation and, as the case may be, the proposal to impose the global safeguard measures including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the WTO Agreement on Safeguards.

2. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.

3. For the purpose of paragraph 2, if one Party considers that the legal requirements are met for the imposition of definitive safeguard measures, the Party intending to apply such measures shall notify the other Party and give the possibility to hold bi-lateral 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 for consultations should also be offered to the other Party in order to exchange views on the information referred to in paragraph 1.

### **Article 3: Exclusion from mediation and bilateral dispute settlement mechanism**

The provisions of this Section referring to WTO rights and obligations shall not be subject to the Mediation and Dispute Settlement provisions of this Agreement.

#### **SECTION XY: BILATERAL SAFEGUARD CLAUSE**

##### **Article 1**

##### **Application of a Bilateral Safeguard Measure**

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, any good originating in the territory of 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 a domestic industry producing like or directly competitive goods, the importing Party may adopt measures provided for in paragraph 2 in accordance with the conditions and procedures laid down in this Section during the transition period only, except as otherwise provided under Article 2.5.(c) of 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 this Agreement; or
  - (b) increases the rate of customs duty on the good 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 XX (Tariff Reduction/Elimination Schedules) pursuant to Article XX (Reduction and/or Elimination of Customs Duties on Imports).

##### **Article 2**

##### **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 reviewing the information arising from the investigation and exchanging views on the measure.
2. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authorities in accordance with Articles 3 and 4.2(c) of the *Agreement on Safeguards* contained in Annex 1A to the WTO Agreement (hereinafter referred to as the “Agreement on Safeguards”) and to this end, Articles 3 and 4.2(c) of the Agreement on Safeguards are incorporated into and made 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 Agreement on Safeguards and to this end, Article 4.2(a) of the Agreement on Safeguards is incorporated into and made 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 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 the 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. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over two years, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
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 XX (Tariff Reduction/Elimination Schedules), would have been in effect but for the measure.

### **Article 3 Provisional Measures**

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 such imports cause serious injury, or 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 Articles 2.2 and 2.3. The Party shall promptly refund any tariff increases if the investigation described in Article 2.2 does not result in a finding that the requirements of Article 1.1 are met. The duration of any provisional measure shall be counted as part of the period prescribed by Article 2.5(b).

## **Article 4 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 safeguard measure. The Party 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 concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure. The applying Party's obligation to provide compensation and the other Party's right to suspend concessions under this paragraph shall terminate on the date the safeguard measure terminates.
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.

## **Article 5 Definitions**

For the purposes of this Section:

**domestic industry** shall be understood in accordance with Article 4.1(c) of the Agreement on Safeguards. To this end, Article 4.1(c) is incorporated into and made part of this Agreement, *mutatis mutandis*;

**serious injury** and **threat of serious injury** shall be understood in accordance with Article 4.1(a) and (b) of the Agreement on Safeguards. To this end, Article 4.1(a) and (b) is incorporated into and made part of this Agreement, *mutatis mutandis*; and

**transition period** means a period for a good from the date of entry into force of this Agreement until 10 years from the entry into force of this Agreement.

## **Article 6 Use of the English language**

In order to ensure the maximum efficiency for the application of the trade remedies rules under these Sections, the investigating authorities of the Parties shall use the English language as a basis for communications and documents exchanged in the context of trade remedies investigations between the Parties.