

CHAPTER 6

TRADE REMEDIES

ARTICLE 6.1 : DEFINITIONS

For the purposes of this Chapter:

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 constitute a major proportion of the total domestic production of those products;

global safeguard measure means a measure applied under Article XIX of GATT 1994 and the WTO Agreement on Safeguards;

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

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

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.

Article 6.2 : Anti-Dumping Measures

1. The Parties maintain their rights and obligations under Article VI of GATT 1994 and the Agreement on Implementation of Article VI of GATT 1994 (“WTO Agreement on Anti-dumping”).

2. Anti-dumping actions taken pursuant to Articles VI of GATT 1994 and the WTO Agreement on Anti-dumping shall not be subject to Chapter 20 (Dispute Settlement).

3. Notwithstanding paragraph 1, the Parties shall observe the following practices in anti-dumping cases between them in order to enhance transparency in the

implementation of the WTO Anti-dumping Agreement:

- (a) when anti-dumping margins are established on the weighted average basis, all individual margins, whether positive or negative, should be counted toward the average; and
- (b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the WTO Agreement on Anti-dumping, the Party taking such a decision, should apply the 'lesser duty' rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 6.3 : COUNTERVAILING MEASURES

1. The Parties maintain their rights and obligations under Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.
2. Countervailing measures taken pursuant to Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures shall not be subject to Chapter 20 (Dispute Settlement).

Article 6.4 : Bilateral Safeguard Measures

1. Subject to paragraphs 2, 3, 4, 5, 6, 7 and 8, 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, such Party may:

- (a) suspend further reduction of any rate of customs duty provided for under this Agreement for such originating good; or
- (b) increase the rate of customs duty on such originating good to a level not to exceed the lesser of:
 - (i) the most-favoured-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 of entry into force of this Agreement.

2. A Party shall take a measure only following an investigation by that Party's competent authorities in accordance with Article 3 and paragraph 2 of Article 4 of the WTO Agreement on Safeguards. To this end, Article 3 and paragraph 2 of Article 4 of the WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*. The investigation shall in all cases be completed within one year following its date of initiation.

3. A Party shall notify the other Party in writing upon initiation of an investigation provided for in paragraph 2 and shall consult 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, exchanging views on the measure and reaching an agreement on compensation as set out in paragraph 8. If a Party takes a provisional measure pursuant to paragraph 7, the Party shall also notify the other Party prior to taking such measure, and shall initiate consultations with the other Party immediately after such measure is taken.

4. No measure may be maintained:

- (a) except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment; or
- (b) for a period exceeding two (2) years; except that the period may be extended by up to two (2) years if the competent authorities determine, in conformity with the procedures set out in paragraphs 1 through 3, 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.

5. Where the expected duration of the measure is over one year, the Party applying such measure shall progressively liberalise it at regular intervals during the period of application.

6. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

7. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a measure described in paragraph 1 on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports 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. The duration of such provisional measure shall not exceed 200 days, during which time the requirements of paragraph 2 shall be met. Any tariff increases shall be promptly refunded if the investigation provided for in paragraph 2 does not result in a finding that the requirements of paragraph 1 are met. The duration of any provisional measure shall be counted as part of the period described in paragraph 4.

8. The Party applying a measure described in paragraph 1 shall provide to the other Party mutually agreed 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 measure. If the Parties are unable to agree on compensation within thirty (30) days in the consultations under paragraph 3, the Party against whose originating good the measure is applied may take action with respect to originating goods 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.

Article 6.5 : Global Safeguard Measures

1. The Parties maintain their rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

2. Actions taken pursuant to paragraph 1 of this Article shall not be subject to Chapter 20 (Dispute Settlement).