

## CHAPTER 6

### TRADE REMEDIES

#### Section A: Safeguard Measures

##### Article 6.1: Definitions

For the purposes of this Section:

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

**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 good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good; and

**transitional safeguard measure** means a measure described in Article 6.3.2 (Imposition of a Transitional Safeguard Measure).

##### Article 6.2: Global Safeguards

1. Nothing in this Agreement affects the rights and obligations of the Parties under Article XIX of GATT 1994 and the Safeguards Agreement.
2. Except as provided in paragraph 3, nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.
3. A Party that initiates a safeguard investigatory process shall provide to the other Parties an electronic copy of the notification given to the WTO Committee on Safeguards under Article 12.1(a) of the Safeguards Agreement.

4. No Party shall apply or maintain a safeguard measure under this Chapter, to any product imported under a tariff rate quota (TRQ) established by the Party under this Agreement. A Party taking a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement may exclude from the safeguard measure imports of originating goods under a TRQ established by the Party under this Agreement and set out in Appendix A to the Party's Schedule to Annex 2-D (Tariff Commitments), if such imports are not a cause of serious injury or threat thereof.

5. No Party shall apply or maintain two or more of the following measures, with respect to the same good, at the same time:

- (a) a transitional safeguard measure under this Chapter;
- (b) a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement;
- (c) a safeguard measure set out in Appendix B to its Schedule to Annex 2-D (Tariff Commitments); or
- (d) an emergency action under Chapter 4 (Textiles and Apparel Goods).

### **Article 6.3: Imposition of a Transitional Safeguard Measure**

1. A Party may apply a transitional safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement:

- (a) an originating good of another Party, individually, is being imported into the Party's territory 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 the domestic industry that produces a like or directly competitive good; or
- (b) an originating good of two or more Parties, collectively, is being imported into the Party's territory 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 the domestic industry that produces a like or directly competitive good, provided that the Party applying the transitional safeguard measure demonstrates, with respect to the imports from each such Party against which the transitional safeguard measure is applied, that imports of the originating good from each of those Parties have increased, in absolute terms or relative to domestic production,

since the date of entry into force of this Agreement for those Parties.

2. If the conditions in paragraph 1 are met, the Party may, 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 provided for under this Agreement on the good; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
  - (i) the most-favoured-nation applied rate of customs duty in effect at the time the measure is applied; and
  - (ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement for that Party.

The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of transitional safeguard measure.

#### **Article 6.4: Standards for a Transitional Safeguard Measure**

1. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

2. That period shall not exceed two years, except that the period may be extended by up to one year if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 6.5 (Investigation Procedures and Transparency Requirements), that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

3. No Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

4. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

5. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in the Party's

Schedule to Annex 2-D (Tariff Commitments) as if that Party had never applied the transitional safeguard measure.

6. No Party shall apply a transitional safeguard measure more than once on the same good.

#### **Article 6.5: Investigation Procedures and Transparency Requirements**

1. A Party shall apply a transitional safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2(c) of the Safeguards Agreement; to this end, Article 3 and Article 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In the investigation described in paragraph 1, the Party shall comply with the requirements of Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement; to this end, Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

#### **Article 6.6: Notification and Consultation**

1. A Party shall promptly notify the other Parties, in writing, if it:

- (a) initiates a transitional safeguard investigation under this Chapter;
- (b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, as set out in Article 6.3 (Imposition of a Transitional Safeguard Measure);
- (c) takes a decision to apply or extend a transitional safeguard measure; and
- (d) takes a decision to modify a transitional safeguard measure previously undertaken.

2. A Party shall provide to the other Parties a copy of the public version of the report of its competent authorities that is required under Article 6.5.1 (Investigation Procedures and Transparency Requirements).

3. When a Party makes a notification pursuant to paragraph 1(c) that it is applying or extending a transitional safeguard measure, that Party shall include in that notification:

- (a) evidence of serious injury, or threat of serious injury, caused by increased imports of an originating good of another Party or Parties

as a result of the reduction or elimination of a customs duty pursuant to this Agreement;

- (b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 2-D (Tariff Commitments) are based;
- (c) a precise description of the transitional safeguard measure;
- (d) the date of the transitional safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and
- (e) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of a Party whose good is subject to a transitional safeguard proceeding under this Chapter, the Party that conducts that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority issued in connection with the proceeding.

#### **Article 6.7: Compensation**

1. A Party applying a transitional safeguard measure shall, after consultations with each Party against whose good the transitional safeguard measure is applied, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, any Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the transitional safeguard measure.

3. A Party against whose good the transitional safeguard measure is applied shall notify the Party applying the transitional safeguard measure in writing at least 30 days before it suspends concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the transitional safeguard measure.

## **Section B: Antidumping and Countervailing Duties**

### **Article 6.8: Antidumping and Countervailing Duties**

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement and the SCM Agreement.
2. Nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to proceedings or measures taken pursuant to Article VI of GATT 1994, the AD Agreement or the SCM Agreement.
3. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Section or Annex 6-A (Practices Relating to Antidumping and Countervailing Duty Proceedings).

## Annex 6-A

### Practices Relating to Antidumping and Countervailing Duty Proceedings

The Parties recognise, in Article 6.8 (Antidumping and Countervailing Duties), the right of the Parties to apply trade remedy measures consistent with Article VI of GATT 1994, the AD Agreement and the SCM Agreement, and further recognise the following practices<sup>1</sup> as promoting the goals of transparency and due process in trade remedy proceedings:

- (a) Upon receipt by a Party's investigating authorities of a properly documented antidumping or countervailing duty application with respect to imports from another Party, and no later than seven days before initiating an investigation, the Party provides written notification of its receipt of the application to the other Party.
- (b) In any proceeding in which the investigating authorities determine to conduct an in-person verification of information that is provided by a respondent,<sup>2</sup> and that is pertinent to the calculation of antidumping duty margins or the level of a countervailable subsidy, the investigating authorities promptly notify each respondent of their intent, and:
  - (i) provide to each respondent at least 10 working days advance notice of the dates on which the authorities intend to conduct an in-person verification of the information;
  - (ii) at least five 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

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<sup>1</sup> The practices included in this Annex do not constitute a comprehensive list of practices relating to antidumping and countervailing duty proceedings. No inference shall be drawn from the inclusion or exclusion of a particular aspect of such proceedings in this list.

<sup>2</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 antidumping or countervailing duty questionnaire.

- (iii) after an in-person verification is completed, and subject to the protection of confidential information<sup>3</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 is made available to all interested parties in sufficient time for the parties to defend their interests.
- (c) A Party's investigating authorities maintain a public file for each investigation and review that contains:
  - (i) all non-confidential documents that are part of the record of the investigation or review; and
  - (ii) 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. To the extent that individual information is not susceptible of summarisation, it may be aggregated by the investigating authority.

The public file and a list of all documents that are contained in the record of the investigation or review are physically available for inspection and copying during the investigating authorities' normal business hours or electronically available for download.<sup>4</sup>

- (d) If, in an antidumping or countervailing duty action that involves imports from another Party, a Party's investigating authorities determine that a timely response to a request for information does not comply with the request, the investigating authorities inform the interested party that submitted the response of the nature of the deficiency and, to the extent practicable in light of time limits established to complete the antidumping or countervailing duty action, 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

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<sup>3</sup> For the purposes of this Annex, "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>4</sup> Charges for the copies, if any, are limited in amount to the approximate cost of the services rendered.



subsequent responses, the investigating authorities explain in the determination or other written document the reasons for disregarding the information.

- (e) Before a final determination is made, the investigating authorities 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 may 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, to provide interested parties an opportunity to respond to the disclosure of essential facts.