

## **Chapter 6 Trade Remedies**

### **Section I Global Safeguards, Anti-dumping and Countervailing**

#### **Article 6.1 Global Safeguard Measures**

1. The Parties maintain their rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement as defined in Article 6.9 (Definitions).

2. Actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement as defined in Article 6.9 (Definitions) shall not be subject to Chapter 13 (Dispute Settlement) of this Agreement.

#### **Article 6.2 Anti-Dumping and Countervailing Duty Matters**

1. The Parties maintain their rights and obligations under the Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures, which are parts of the WTO Agreement.

2. Anti-dumping actions taken pursuant to Article VI of GATT 1994 and the Agreement on Implementation of Article VI of the GATT 1994 or countervailing actions taken pursuant to Article VI of GATT 1994 and the Agreement on Subsidies and Countervailing Measures shall not be subject to Chapter 13 (Dispute Settlement) of this Agreement.

3. Both Parties confirm that there shall be no practice between the two Parties to use a methodology based on the surrogate value of a third country, including the use of a surrogate price or surrogate cost in determining normal value and export price when determining dumping margin during an anti-dumping procedure.<sup>2</sup>

### **Section II Bilateral Safeguards**

#### **Article 6.3 Imposition of a Bilateral Safeguard Measure**

---

<sup>2</sup> This paragraph refers to the measure described in paragraph 15, subparagraph (a), on "Price Comparability in Determining Subsidies and Dumping" of the Protocol on Accession of the People's Republic of China to the WTO, which expired in 2016.

1. If, as a result of the reduction or elimination of a duty provided for in this Agreement, a product benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic production, and under such conditions as to substantially cause serious injury or threat thereof to a domestic industry producing a like or directly competitive product, the importing Party may impose a safeguard measure described in paragraph 2 during the transition period only.

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

- (a) suspend the further reduction of any rate of duty on the product provided for under this Agreement; or
- (b) increase the rate of duty on the product to a level not to exceed the lesser of
  - (i) the MFN applied rate of duty in effect at the time the action is taken; or
  - (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.<sup>3</sup>

#### **Article 6.4 Standards for a Definitive Bilateral Safeguard**

1. A Party may apply a definitive bilateral safeguard measure for an initial period of three years, with an extension not exceeding one year. Regardless of its duration, such measure shall terminate at the end of the transition period determined in Article 6.9 (Definitions).

2. No safeguard measure shall be applied to the import of a product that has previously been subject to such a measure unless a period equivalent to half the total duration of the measure applied has elapsed.

3. Neither Party may impose a safeguard measure on a product that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a product that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

---

<sup>3</sup> The Parties understand that neither tariff rate quotas nor quantitative restrictions would be permissible forms of a safeguard measure.

4. On the termination of a safeguard measure, the rate of duty shall be the duty set out in the Party's schedule to Annex 2 (Schedule of Tariff Commitments) of this Agreement as if the measure had never been applied.

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

1. The importing Party may take a safeguard measure under this Section only following an investigation by its competent authorities and in accordance with Article 3 and Article 4.2 of the Safeguards Agreement, and to this end, Article 3 and Article 4.2 of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. Each Party shall ensure that its competent investigating authorities complete any bilateral safeguard investigation without exceeding 12 months from the date of its initiation.

#### **Article 6.6 Provisional Measures**

1. In critical circumstances where any delay would cause damage that would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days. Such a measure should take the form of the suspension of the further reduction of any rate of duty provided for under this Agreement on the product or an increase in the customs duties to a rate not exceeding the lesser of the rates in subparagraph (b) of paragraph 2 of Article 6.3 (Imposition of a Bilateral Safeguard Measure).

2. Any additional customs duties or guarantees collected shall be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension of a definitive measure.

#### **Article 6.7 Notification and Consultation**

1. A Party shall promptly notify the other Party, in writing, of the following:
  - (a) initiating an investigation;
  - (b) taking a provisional safeguard measure;

- (c) making a finding of serious injury or threat thereof caused by increased imports;
- (d) taking a decision to impose or extend a definitive measure; and
- (e) taking a decision to modify a measure previously undertaken.

2. In making the notifications referred to in sub-paragraphs (d) and (e) of paragraph 1, the Party applying the measure shall provide the other Party all pertinent information, such as a precise description of the product involved, the proposed measure, the grounds for introducing such a measure, the proposed date of introduction, and its expected duration. The notifying Party shall provide a courtesy, non-official English translation of the notification.

3. A Party applying a provisional or definitive measure or extending a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, inter alia, reviewing the information provided in accordance with paragraph 2, exchanging views on the bilateral safeguard measure, and reaching an agreement on compensation in accordance with Article 6.8 (Compensation).

#### **Article 6.8      Compensation**

1. The Party applying a safeguard measure for a period beyond 3 years shall, upon the request of the Party whose product is subject to a safeguard measure, hold consultations in order to 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 measure.

2. If the Parties are unable to reach agreement on compensation within 45 days after the request under paragraph 1, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

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

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

#### **Article 6.9      Definitions**

For purposes of this Section:

**competent authority** means:

- (a) in the case of China, Ministry of Commerce, or its successor; and
- (b) in the case of Ecuador, Trade Remedies Directorate of the Ministry of Production, Foreign Trade, Investment, and Fisheries, or its successor;

**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;

**Safeguards Agreement** means the *Agreement on Safeguards*, which is part of the WTO Agreement;

**safeguard measure** means a safeguard measure described in paragraph 2 of Article 6.3 (Imposition of a Bilateral Safeguard Measure);

**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; and

**transition period:** means the eight-year period beginning on the date of entry into force of this Agreement, except in the case of a product where the liberalization process lasts five or more years, in which case the transition period shall be equal to the period in which such a product reaches zero tariff according to the Schedule to Annex 2 (Schedule of Tariff Commitments) of this Agreement plus a period of five years.

### **Section III      Cooperation**

#### **Article 6.10      Cooperation**

The Parties shall establish a cooperation mechanism between the investigating authorities

of each Party to ensure each Party has a clear understanding of the practices adopted by the other Party in trade remedies investigations.