

CHAPTER 2

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 92

General Provisions

1. The Parties retain their rights and obligations under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "Anti-Dumping Agreement") and from the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the "SCM Agreement") and the WTO Agreement on Rules of Origin (hereinafter referred to as the "Agreement on Rules of Origin").
2. Where anti-dumping or countervailing measures can be imposed on a regional basis and on a national basis, the Parties shall ensure that such anti-dumping or countervailing measures are not applied simultaneously in respect of the same product by regional and national authorities.

ARTICLE 93

Transparency and Legal Certainty

1. The Parties agree that trade remedies shall be used in full compliance with WTO requirements and shall be based on a fair and transparent system.
2. Recognising the benefits of legal certainty and predictability for the economic operators, the Parties shall ensure that, where applicable, their respective domestic legislation in the field of anti-dumping and countervailing measures is and will remain harmonised and fully compatible with WTO legislation.
3. Notwithstanding Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement, it is desirable that the Parties ensure, immediately after any imposition of provisional measures, complete and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures, without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing and shall be provided to interested parties with sufficient time to defend their interests.
4. Upon request of the interested parties, the Parties shall grant them the possibility to be heard in order to express their views during anti-dumping or countervailing measures investigations. This shall not unnecessarily delay the conduct of the investigations.

ARTICLE 94

Consideration of Public Interest

A Party may choose not to apply anti-dumping or countervailing measures 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.

ARTICLE 95

Lesser Duty Rule

Where a Party decides to impose an anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, but it is desirable that the duty be less than this margin if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 96

Causal Link

In order to impose anti-dumping or countervailing measures, and in accordance with the provisions established in Article 3.5 of the Anti-Dumping Agreement and Article 15.5 of the SCM Agreement, investigating authorities shall, as part of the demonstration of a causal relationship between the dumped imports and the injury to the domestic industry, separate and distinguish the injurious effects of all known factors from the injurious effects of the dumped or subsidized imports.

ARTICLE 97

Cumulative Assessment

When imports from more than one country are simultaneously subject to anti-dumping or countervailing duty investigations, the investigating authority of the EU Party shall examine with special care whether the cumulative assessment of the effects of the imports from any Republic of the CA Party, is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

ARTICLE 98

Exclusion from Dispute Settlement Procedures

The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement for matters arising under this Section.

SECTION B

SAFEGUARD MEASURES

SUB-SECTION B.1

GENERAL PROVISIONS

ARTICLE 99

Administration of Safeguard Proceedings

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws, regulations, decisions and rulings governing the proceedings for the application of safeguard measures.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in safeguard proceedings under this Section to a competent investigating authority. These determinations shall be subject to review by judicial or administrative tribunals, to the extent provided by domestic legislation.
3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard proceedings under this Section.

ARTICLE 100

Non Cumulation

Neither Party may apply, with respect to the same product, at the same time:

- (a) a bilateral safeguard measure in accordance with Sub-Section B.3 (Bilateral Safeguard Measures) of this Chapter; and
- (b) a measure under Article XIX of GATT 1994, the WTO Agreement on Safeguards (hereinafter referred to as the "Safeguards Agreement") or Article 5 of the Agriculture Agreement.

SUB-SECTION B.2

MULTILATERAL SAFEGUARD MEASURES

ARTICLE 101

General Provisions

The Parties retain their rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement, Article 5 of the Agriculture Agreement and the Agreement on Rules of Origin.

ARTICLE 102

Transparency

Notwithstanding Article 101, at the request of the other Party, the Party initiating an investigation or intending to take safeguard measures shall provide immediately *ad hoc* written notification of all pertinent information including where relevant, on the initiation of a safeguard investigation, on the provisional findings and on the final findings of the investigation.

ARTICLE 103

Exclusion from Dispute Settlement Procedures

The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement for provisions referring to WTO rights and obligations arising under this Sub-Section.

SUB-SECTION B.3

BILATERAL SAFEGUARD MEASURES

ARTICLE 104

Application of a Bilateral Safeguard Measure

1. Notwithstanding Sub-Section B.2 (Multilateral Safeguard Measures), if as a result of the reduction or elimination of a customs duty under this Agreement, a product originating in 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 so as to constitute a substantial cause or threat of serious injury to domestic producers of like or directly competitive products, the importing Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Sub-Section.

2. If the conditions in paragraph 1 are met, the safeguard measures of the importing Party may only consist of one of the following:
 - (a) suspension of the further reduction of the rate of customs duty on the product concerned provided for under this Agreement; or
 - (b) increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
 - (i) the most-favoured nation applied rate of customs duty on the product in effect at the time the measure is taken; or
 - (ii) the most-favoured nation applied rate of customs duty on the product in effect on the day immediately preceding the date of entry into force of this Agreement.
3. In case of products which were already fully liberalised before the entry into force of this Agreement following tariff preferences granted before the entry into force of this Agreement, the EU Party shall examine with special care whether increased imports result from the reduction or elimination of customs duties under this Agreement.
4. None of the above measures shall be applied within the limits of the preferential duty free tariff quotas granted by this Agreement.

ARTICLE 105

Conditions and Limitations

1. A bilateral safeguard measure may not be applied:
 - (a) except to the extent, and for such time, as may be necessary to prevent or remedy the situation described in Article 104 or 109;
 - (b) for a period exceeding two years. The period may be extended by another two years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Sub-Section, that the measure continues to be necessary to prevent or remedy the situations described in Article 104 or 109, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or
 - (c) beyond the expiration of the transition period, except with the consent of the other Party.

"Transition period" means ten years from the date of entry into force of this Agreement. For any good for which the Schedule in Annex I (Elimination of Customs Duties) of the Party applying the measure provides for tariff elimination of ten or more years, transition period means the tariff elimination period for the goods set out in that Schedule, plus three years.

2. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good, according to the Schedule of that Party.

ARTICLE 106

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, without complying with the requirements of Article 116, paragraph 1 of this Chapter, pursuant to a preliminary determination that there is clear evidence that imports of a product originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the situations described in Article 104 or 109. The duration of any provisional measure shall not exceed two hundred days, during which time the Party shall comply with the relevant procedural rules laid down in Sub-Section B.4 (Procedural Rules Applicable to Bilateral Safeguard Measures). The Party shall promptly refund any tariff increases if the investigation described in Sub-Section B.4 does not result in a finding that the requirements of Article 104 are met. The duration of any provisional measure shall be counted as part of the period described in Article 105, paragraph 1(b). The importing Party concerned shall inform the other Party concerned upon taking such provisional measures and it shall immediately refer the matter to the Association Committee for examination if the other Party so requests.

ARTICLE 107

Compensation and Suspension of Concessions

1. A Party applying a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect. The Party shall provide an opportunity for such consultations no later than thirty 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 thirty days, the Party whose products are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

ARTICLE 108

Time Lapse in between Two Measures

No safeguard measure referred to in this Sub-Section shall be applied to the import of a product that has previously been subject to such a measure, unless a period of time equal to half of that during which the safeguard measure was applied for the immediately preceding period has elapsed.

ARTICLE 109

Outermost Regions

1. Where any product originating in one or several of the Republics of the CA Party is being imported into the territory of one or several outermost regions of the EU Party in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region(s) concerned of the EU Party, the EU Party, after having examined alternative solutions, may exceptionally take safeguard measures limited to the territory of the region(s) concerned.
2. Without prejudice to the provisions of paragraph 1, other rules laid down in this Sub-Section applicable to bilateral safeguards are also applicable to any safeguard adopted under this Article.
3. The Association Council may discuss whether in cases of threat of, or serious deterioration in the economic situation of extremely underdeveloped regions of the Republics of the CA Party, this Article may also apply to those regions.

SUB-SECTION B.4

PROCEDURAL RULES APPLICABLE TO BILATERAL SAFEGUARD MEASURES

ARTICLE 110

Applicable Law

For the application of bilateral safeguard measures, the competent investigating authority shall comply with the provisions of this Sub-Section and in cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under its domestic legislation.

ARTICLE 111

Initiation of a Proceeding

1. Pursuant to each Party's domestic legislation, a safeguard proceeding may be initiated by the competent investigating authority on its own initiative, upon receipt of information from one or more Member States of the European Union, or upon a written application by entities specified in domestic legislation. In the cases when the proceeding is initiated on the basis of a written application, the entity filing the application shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good.

2. Once the written applications have been filed, these shall promptly be made available for public inspections, except for the confidential information contained.
3. Upon initiation of a safeguard proceeding, the competent investigating authority shall publish a notice of initiation of the proceeding in the official journal of the Party. The notice shall identify the entity which filed the written application, if applicable, the imported good that is the subject of the proceeding and its subheading and the tariff item number under which it is classified, the nature and timing of the determination to be made, the time and place of the public hearing or the period within which interested parties may apply to be heard orally by the investigating authority, the period within which interested parties may make known their views in writing and submit information, the place at which the written application and any other non-confidential documents filed in the course of the proceeding may be inspected and the name, address and telephone number of the office to be contacted for more information.
4. With respect to a safeguard proceeding initiated on the basis of a written application filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice required by paragraph 3 without first assessing carefully that the written application meets the requirements of its domestic legislation.

ARTICLE 112

Investigation

1. A Party may apply a safeguard measure only following an investigation by the competent investigating authority of that Party pursuant to procedures laid down in this Sub-Section. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties.
2. Each Party shall ensure that its competent investigating authority completes any such investigation within twelve months of its date of initiation.

ARTICLE 113

Evidence of Injury and Causal Link

1. In conducting its proceeding, the competent investigating authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular the rate and amount of the increase in imports of the good concerned in absolute terms or relative to domestic production, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

2. The determination whether increased imports have caused or are threatening to cause the situations described in Article 104 or 109, shall not be made, unless the investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and the situations described in Article 104 or 109. Where factors other than increased imports are, at the same time, causing the situations described in Article 104 or 109, such injury or serious deterioration in the economic situation shall not be attributed to increased imports.

ARTICLE 114

Hearings

In the course of each proceeding, the competent investigating authority shall:

- (a) hold a public hearing, after providing reasonable notice, to allow all interested parties and any representative consumer association, to appear in person or by counsel, to present evidence and to be heard on serious injury or threat of serious injury, and the appropriate remedy; or
- (b) provide an opportunity to all interested parties to be heard where they have made a written application within the period laid down in the notice of initiation showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

ARTICLE 115

Confidential Information

Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent investigating authority. Such information shall not be disclosed without permission of the Party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent investigating authority finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

ARTICLE 116

Notifications and Publications

1. Where a Party takes the view that one of the circumstances set out in Article 104 or 109 exists, it shall immediately refer the matter to the Association Committee for examination. The Association Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Association Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within thirty days of the matter being referred to the Association Committee, the importing Party may adopt the appropriate measures to remedy the circumstances in accordance with this Sub-Section.
2. The competent investigating authority shall provide the exporting Party with all pertinent information, which shall include evidence of injury or serious deterioration in the economic situation, caused by increased imports, precise description of the product involved and the proposed measures, proposed date of imposition and expected duration.
3. The competent investigating authority shall also publish its findings and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of the Party, including the description of the imported good and the situation which has given rise to the imposition of measures in accordance with Article 104 or 109, the causal link between such situation and the increased imports, and the form, level and duration of the measures.

4. The competent investigating authority shall not disclose any information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.

CHAPTER 3

CUSTOMS AND TRADE FACILITATION

ARTICLE 117

Objectives

1. The Parties recognise the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties agree to reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of effective control and the promotion of trade facilitation, and help promote the development and regional integration of the Republics of the CA Party.
2. The Parties recognise that legitimate public policy objectives, including in relation to security and the prevention of fraud, shall not be compromised in any way.