

CHAPTER 3

WTO TRADE DEFENSE AND GLOBAL SAFEGUARDS

ARTICLE 3.1

Relationship with the WTO Agreements

1. This Chapter applies without prejudice to the rights and obligations established under Articles VI, XVI and XIX of GATT 1994 and the ADA, the ASCM and the ASFG. For clarity, non-preferential rules of origin shall be applied under the WTO Agreements referred to in this paragraph.
2. Measures pursuant to this Chapter shall be used in a fair and transparent manner and except as otherwise provided for in this Chapter, in full compliance with the relevant WTO requirements.

ARTICLE 3.2

Anti-Dumping

1. The State Parties shall endeavour to apply the ADA in a way that least affects trade between the Parties.
2. Except where circumstances have changed, a State Party shall not initiate an investigation if its previous investigation regarding the same product from the same State Party resulted in a negative final determination less than one year prior to the filing of the application. If an investigation is initiated in such a case, that State Party shall, in the notice of initiation, explain the change in circumstances which warrants the initiation.
3. A State Party conducting an investigation shall take into account the information provided by industrial users of the product under investigation, importers and, if applicable, representative consumer organisations according to Article 6.12 of the ADA.
4. In addition to the conditions set forth in Article 7.1 of the ADA, provisional measures may only be applied if interested parties have been given adequate opportunities to submit information, including responses to questionnaires sent in accordance with Article 6.1.1 of the ADA, and a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry taking into account responses to questionnaires received from, and other relevant information submitted by, interested parties.
5. A State Party shall carefully consider proposals of price undertakings made by exporters of another State Party concerned.

6. If a State Party decides to apply an anti-dumping measure, that State Party shall favour the imposition of a duty that is less than the margin of dumping if that level is adequate to remove the injury to the domestic industry.

7. A State Party shall carefully consider terminating an anti-dumping measure as soon as material injury and imminent threat thereof to the domestic industry have been removed, if possible and without prejudice to the rights and obligations established under the ADA, within five years from its imposition.

ARTICLE 3.3

Global Safeguard Measures

1. A State Party adopting global safeguard measures shall impose them in a way that least affects bilateral trade.

2. Upon request of the exporting State Party, the State Party initiating a safeguard investigation shall immediately provide:

- (a) the information referred to in Articles 12.2 and 12.6 of the ASFG, in the format prescribed by the WTO Committee on Safeguards; and
- (b) the public notice of initiation of the investigation and the public version of the complaint filed by the domestic industry.

3. Upon request of the exporting State Party, the State Party intending to adopt provisional or definitive safeguard measures shall immediately provide the information referred to in Article 12.2 of the ASFG, in the format prescribed by the WTO Committee on Safeguards, and a public report setting forth the findings and reasoned conclusions on all pertinent issues of fact and law considered in the safeguard investigation. The public report shall include an analysis that attributes injury to the factors causing it and set out the method used in defining the safeguard measures.

4. When intending to impose definitive safeguard measures that include one or several State Parties, the importing State Party shall inform the exporting State Parties and offer to hold informal consultations. The importing State Party shall not adopt definitive safeguard measures until 30 days have elapsed from the date the offer for consultations was made.

ARTICLE 3.4

Transparency

1. For transparency purposes and without prejudice to Article 6.5 of the ADA, Article 12.4 of the ASCM and Article 3.2 of the ASFG, each State Party shall ensure that:

- (a) as soon as possible after the imposition of provisional measures, interested parties be given full access to the facts that are the basis of the determinations, the injury assessment, calculation of the dumping or

subsidy margins, if applicable, and causality; and

- (b) before the final determination, there is a full and meaningful disclosure of all essential facts and considerations which form the basis for the final determination and the decision to apply measures, including those related to injury assessment, calculation of the dumping or subsidy margins, if applicable, and causality.

2. All information referred to in paragraph 1 shall be sent in writing, preferably in electronic version.

ARTICLE 3.5

Notification and Consultations

1. As soon as possible after an application is accepted and before initiating an investigation in accordance with the ADA or the ASCM concerning imports from another State Party, the importing State Party shall notify in writing the State Party concerned.

2. As soon as possible after the corresponding public notice has been issued, the importing State Party shall notify the exporting State Party of:

- (a) any decision to initiate an investigation;
- (b) any decision to apply a provisional measure; and
- (c) any decision to apply or not a definitive measure.

3. At any stage of the investigation, a State Party may request consultations with the State Party intending to apply or applying measures pursuant to this Chapter. The importing State Party shall offer to hold consultations between competent authorities within ten days from the request.

4. Upon request of a State Party, consultations may take place in the Joint Committee. Such consultations may take place partially or entirely by videoconference if a State Party so requests.

ARTICLE 3.6

Dispute Settlement

The Parties shall not have recourse to Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.