

CHAPTER 5

TRADE REMEDIES

SECTION A

GLOBAL SAFEGUARD MEASURES

ARTICLE 5.1

Global safeguard measures

1. The State Parties affirm their rights and obligations concerning global safeguard measures under Article XIX (Emergency Action on Imports of Particular Products) of GATT 1994 and the Safeguards Agreement.
2. Except as provided for in paragraph 3, no provision of this Agreement shall be construed as imposing any rights or obligations on the State Parties with respect to global safeguard measures.
3. A State Party that initiates a safeguard investigatory process shall provide to another State Party an electronic copy of the notification given to the WTO Committee on Safeguards pursuant to subparagraph (a) of Article 12.1 (Notification and Consultation) of the Safeguards Agreement.

SECTION B

ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 5.2

General provisions

1. The State Parties affirm their rights and obligations under Article VI (Anti-dumping and Countervailing Duties) of GATT 1994, the Anti-Dumping Agreement and the SCM Agreement and shall apply anti-dumping and countervailing measures in accordance with this Chapter. To this end, this Agreement shall apply to the extent not specifically provided for in the Anti-Dumping Agreement and the SCM Agreement.

2. The State Parties should use anti-dumping and countervailing measures in full compliance with the relevant WTO requirements. Those measures should be based on a fair and transparent system and careful consideration should be given to the interests of the State Party against which such a measure is to be imposed.

ARTICLE 5.3

Practices relating to anti-dumping and countervailing duty proceedings

1. In any proceeding in which the investigating authorities determine to conduct an in-person verification of information that is provided by a respondent¹, and that is pertinent to the calculation of anti-dumping duty margins or the level of a countervailable subsidy, the investigating authorities shall promptly notify each respondent of their intent, and:
 - (a) at least 10 (ten) days prior to an in-person verification, provide the respondent a list of topics that the respondent should be prepared to address during the verification visit and that describes the types of supporting documentation to be made available for review; and

¹ 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 State Party's investigating authorities to respond to an antidumping or countervailing duty questionnaire.

- (b) after an in-person verification is completed, and subject to the protection of confidential information², 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 shall be made available to all interested parties in sufficient time for the parties to defend their interests.
2. A State Party's investigating authorities shall maintain a non-confidential file for each investigation and review that contains:
- (a) all non-confidential documents that are part of the record of the investigation or review; and
 - (b) 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.
3. The non-confidential file and a list of all documents that are contained in the record of the investigation or review shall be physically available for inspection and copying during the investigating authorities' normal business hours or electronically available for download.
4. If, in an anti-dumping or countervailing duty action that involves imports from another State Party, a State Party's investigating authorities determine that a timely response to a request for information does not comply with the request, the investigating authorities shall 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 anti-dumping or countervailing duty action, provide that interested party with an opportunity to remedy or explain the deficiency.

ARTICLE 5.4

Notifications and consultations

² For the purposes of this chapter, "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.

1. Upon receipt by a State Party's competent authorities of a properly documented anti-dumping application with respect to imports from another State Party, as soon as possible in accordance with each State Party's laws and regulations before initiating such anti-dumping investigation, the State Party shall provide written notification to another State Party of its receipt of the application.

2. Upon receipt by a State Party's competent authorities of a properly documented countervailing duty application with respect to imports from another State Party, and before initiating an investigation, the State Party shall provide written notification to that other State Party of its receipt of the application as soon as possible in accordance with each State Party's laws and regulations in advance of the date of initiation and invite that other State Party for consultations on the application.

ARTICLE 5.5

Treatment of confidential information

1. The investigating authority of a State Party shall require interested parties providing confidential information to furnish non-confidential summaries thereof, referred to in subparagraph (6.5.1) of Article 6(6.5) (Evidence) of the Anti-Dumping Agreement. These non-confidential summaries referred to in subparagraph (6.5.1) of Article 6(6.5) (Evidence) of the Anti-Dumping Agreement shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence in order to allow the other interested parties in the investigation an opportunity to respond and defend their interest.

2. The exceptional circumstances referred to in subparagraph (6.5.1) of Article 6(6.5) (Evidence) of the Anti-Dumping Agreement shall be limited to the cases where summarisation necessarily leads to disclosure of the confidential information or a failure to provide a sufficient level of detail to permit a reasonable understanding of the substance of the information submitted in confidence.

ARTICLE 5.6

Disclosure of the essential facts

The investigating authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration. Such disclosure shall take place in sufficient time for the parties to defend their interests, and they should be allowed to make their comments in accordance with each State Party's laws and regulations.

ARTICLE 5.7

Undertakings

1. After a State Party's competent authorities initiate an anti-dumping or countervailing duty investigation, upon request of another State Party, the State Party shall transmit to that other State Party's competent authorities written information regarding the State Party's procedures for requesting its authorities to consider an undertaking on price including the timeframes for offering and concluding any such undertaking.
2. In an anti-dumping investigation, where a State Party's competent authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the State Party shall afford due consideration and opportunity for meetings to exporters of another State Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of anti-dumping duties, consistent with the State Party's laws and regulations.
3. In a countervailing duty investigation, where a State Party's competent authorities have made a preliminary affirmative determination of subsidisation and injury caused by such subsidisation, the State Party shall afford due consideration and opportunity for meetings to another State Party and exporters of that other State Party regarding proposed price undertakings, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, consistent with the State Party's laws and regulations.

ARTICLE 5.8

Lesser duty rule

If a State Party decides to apply an anti-dumping or countervailing duty in respect of goods from another State Party, it shall, in accordance with its laws and regulations, apply a duty that is less than the margin of dumping or total amount of the subsidy if that level is adequate to remove the injury to the domestic industry.

ARTICLE 5.9

Sunset reviews

1. A State Party shall not initiate a review pursuant to Article 11(11.3) (Duration and Review of Anti-Dumping Duties and Price Undertakings) of the Anti-Dumping Agreement without a request submitted by or on behalf of its domestic industry.
2. A request to initiate a review pursuant to Article 11(11.3) (Duration and Review of Anti-Dumping Duties and Price Undertakings) of the Anti-Dumping Agreement should be submitted by or on behalf of the domestic industry no later than 3 (three) months prior to the end of the five (5) year period following the date of the imposition of the anti-dumping duty or of the five (5) year period following the effective date of the most recent review of the anti-dumping duty. The review shall normally be completed within 12 (twelve) months from the date of initiation.
3. Each State Party shall analyse with special care requests for the extension of measures in force against exporters of another State Party.

ARTICLE 5.10:

Exemption from investigation after termination

Except where circumstances have changed, the State Parties shall not initiate an investigation where a previous investigation of the same product from the same State Party resulted in a negative final determination within 1 (one) year prior to the filing of the application. If an investigation is initiated in such a case, the State Parties shall, in the notice of initiation, explain the change in circumstances which warrants initiation.

SECTION C

GENERAL PROVISIONS

ARTICLE 5.11

Special agricultural safeguards

The State Parties shall exempt bilateral trade subject to preferential treatment from the application of Article 5 (Special Safeguard Provisions) of the Agreement on Agriculture.

ARTICLE 5.12

Rules of origin

The preferential rules of origin under this Agreement shall not apply to this Chapter.

ARTICLE 5.13

Non-application of dispute settlement

The Parties shall not have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Chapter.