

CHAPTER 2

TRADE REMEDIES

SECTION 1

GLOBAL SAFEGUARD MEASURES

ARTICLE 37

General provisions

1. The Parties confirm their rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards contained in Annex 1A to the WTO Agreement ("Agreement on Safeguards") and Article 5 of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement ("Agreement on Agriculture").
2. The preferential rules of origin established under Chapter 1 (National Treatment and Market Access for Goods) of Title IV (Trade and Trade-related Matters) of this Agreement shall not apply to this Section.
3. The provisions of this Section shall not be subject to Chapter 14 (Dispute Settlement) of Title IV (Trade and Trade-related Matters) of this Agreement.

ARTICLE 38

Transparency

1. The Party initiating a safeguard investigation shall notify the other Party of such initiation provided the latter has a substantial economic interest.
2. Notwithstanding Article 37 of this Agreement, at the request of the other Party, the Party initiating a safeguard investigation and intending to apply safeguard measures shall provide immediately ad hoc written notification of all the pertinent information leading to the initiation of a safeguard investigation and the imposition of safeguard measures, including, where relevant, information on the initiation of a safeguard investigation, on the provisional findings and on the final findings of the investigation, as well as offer the possibility for consultations to the other Party.
3. For the purposes of this Article, a Party shall be considered as having a substantial economic interest when it is among the five largest suppliers of the imported product during the most recent three-year period of time, measured in terms of either absolute volume or value.

ARTICLE 39

Application of measures

1. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that affects their bilateral trade the least.
2. For the purposes of paragraph 1 of this Article, if a Party considers that the legal requirements for the imposition of definitive safeguard measures are met and intends to apply such measures, that Party shall notify the other Party and give the latter the possibility to hold bilateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the importing Party may adopt the appropriate measures to remedy the problem.

SECTION 2

ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 40

General provisions

1. The Parties confirm their rights and obligations under Article VI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, contained in Annex 1A to the WTO Agreement ("Anti-Dumping Agreement") and the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement ("SCM Agreement").
2. The preferential rules of origin established under Chapter 1 (National Treatment and Market Access for Goods) of Title IV (Trade and Trade-related Matters) of this Agreement shall not apply to this Section.
3. The provisions of this Section shall not be subject to Chapter 14 (Dispute Settlement) of Title IV (Trade and Trade-related Matters) of this Agreement.

ARTICLE 41

Transparency

1. The Parties agree that anti-dumping and countervailing measures should be used in full compliance with the requirements of the Anti-Dumping Agreement and the SCM Agreement, respectively, and should be based on a fair and transparent system.
2. The Parties shall ensure, immediately after the imposition of provisional measures and

before the final determination is made, full 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 allow interested parties sufficient time to make their comments.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested Party shall be granted the possibility to be heard in order to express their views during anti-dumping and anti-subsidy investigations.

ARTICLE 42

Consideration of public interest

Anti-dumping or countervailing measures may not be applied by a Party 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. The public interest determination shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry, users, consumers and importers to the extent that they have provided relevant information to the investigating authorities.

ARTICLE 43

Lesser duty rule

Should a Party decide to impose a provisional or a definitive anti-dumping or a countervailing duty, the amount of such duty shall not exceed the margin of dumping or the total amount of countervailable subsidies, but it should be less than the margin of dumping or the total amount of countervailable subsidies if such a lesser duty would be adequate to remove the injury to the domestic industry.