

CHAPTER 8

TRADE DEFENCE AND GLOBAL SAFEGUARDS

SECTION A

GENERAL PRINCIPLES

ARTICLE 8.1

Relationship with the WTO Agreements

1. This Chapter applies without prejudice to the rights and obligations of the Parties under the ADA, the SCM Agreement, the Safeguards Agreement and the DSU.
2. The Parties shall exempt bilateral trade subject to preferential treatment from the application of the Special Agricultural Safeguard of the Agreement on Agriculture.
3. The preferential rules of origin under this Agreement do not apply to trade defence and global safeguard investigations conducted in accordance with this Chapter.

ARTICLE 8.2

Transparency

1. Trade defence and safeguard measures should be used in full compliance with the relevant WTO requirements and be based on a fair and transparent system.
2. As soon as possible after the imposition of a provisional measure, a Party shall give to the interested parties full access to the facts that are the basis for the determinations, the injury assessment, calculations of the dumping and subsidies margins and causality. In addition, before the final determination, a Party shall fully and meaningfully disclose all essential facts and considerations which form the basis for the decision to apply a measure. This paragraph is without prejudice to Article 6.5 of the ADA, Article 12.4 of the SCM Agreement and Article 3.2 of the Safeguards Agreement.
3. A Party shall send all the information referred to in paragraph 2 in writing, preferably in electronic format, and the interested parties should be given enough time to make comments. For Parties whose investigating authorities keep electronic case files, all the information referred to in paragraph 2 may be made available online.

SECTION B

ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 8.3

Considerations concerning anti-dumping and countervailing measures

Each Party shall:

- (a) analyse with special care proposals of price undertakings made by exporters of the other Party;
- (b) favour the imposition of a duty that is lower than the margin of dumping or subsidy, if that level is sufficient to remove the injury to the domestic industry;
- (c) analyse with special care requests for the extension of measures in force against exporters of the other Party; and
- (d) take into consideration the information provided by industrial users of the product under investigation, importers and, if applicable, representative consumer organisations in the context of Article 6.12 of the ADA and Article 12.10 of the SCM Agreement.

SECTION C

GLOBAL SAFEGUARDS

ARTICLE 8.4

Transparency on global safeguards

1. Upon request of the exporting Party, and provided that it has a substantial interest in exporting the product concerned as defined in paragraph 3 of this Article, the Party initiating a safeguard investigation or intending to adopt provisional or definitive safeguard measures shall immediately provide:

- (a) the information referred to in Article 12.2 of the Safeguards Agreement, in the format prescribed by the WTO Committee on Safeguards;
- (b) the public version of the complaint filed by the domestic industry, if relevant; and
- (c) the 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 referred to in point (c) of this paragraph shall include an analysis that attributes injury to the factors causing it and shall set out the method used in defining the safeguard measures.

2. If information is provided under this Article, the importing Party shall offer to hold informal consultations with the exporting Party in order to review the information provided.

3. For the purposes of this Article, it is considered that a Party has a substantial interest if it is among the 5 (five) largest suppliers of the imported products concerned during the most recent period of 3 (three) years, measured in terms of either absolute volume or value.

ARTICLE 8.5

Application of definitive measures

1. A Party adopting safeguard measures shall endeavour to apply them in the way that least affects bilateral trade.

2. The importing Party shall offer to hold informal consultations with the exporting Party in order to review the matter referred to in paragraph 1. The importing Party shall not adopt measures within 30 (thirty) days of the date on which the offer to hold informal consultations was made.

SECTION D

DISPUTE SETTLEMENT

ARTICLE 8.6

Non-application of dispute settlement

No Party shall have recourse to dispute settlement under Chapter 21 for any matter arising under this Chapter.