

CHAPTER 8

TRADE REMEDIES

Section I

Article 8.1: Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards, as they may be amended.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, as they may be amended.

Article 8.2: Anti-dumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, as they may be amended, with regard to the application of anti-dumping and countervailing duties.
2. No provision of this Agreement, including the provisions of Chapter 12 (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to anti-dumping or countervailing duty measures.

Section II

Bilateral Safeguard Measures

Article 8.3: Definitions

For the purposes of this Section:

- (a) **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive good or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;
- (b) **serious injury** means a significant overall impairment in the position of a domestic industry;

- (c) **substantial cause** means a cause which is important and not less than any other cause;
- (d) **threat of serious injury** means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility; and
- (e) **transition period** means the five year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

Article 8.4: Imposition of a Bilateral Safeguard Measure

1. A Party may impose a bilateral safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of the other Party is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing like or directly competitive goods.

2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment, apply a bilateral safeguard measure, consisting of:

- (a) suspending further reduction of any rate of customs duty provided for under this Agreement on the originating good from the date on which the action to apply the bilateral safeguard measure is taken; or
- (b) increasing the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty in effect on the date on which the action to apply the bilateral safeguard measure is taken; or
 - (ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

3. Each Party shall not apply bilateral safeguard measure on an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 3.

Article 8.5: Scope and Duration of Safeguard Measures

1. A Party may apply a bilateral safeguard measure, including any extension thereof, for no longer than three years. Regardless of its duration, such measure shall terminate at the end of the transition period. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.
2. Neither Party may impose a bilateral safeguard measure more than once on the same good.
3. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good in accordance with:
 - (a) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards; or
 - (b) Article 5 of the WTO Agreement on Agriculture.
4. Neither Party may impose a bilateral safeguard measure on a good that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994, the WTO Agreement on Safeguards or the WTO Agreement on Agriculture and neither Party may continue maintaining a bilateral safeguard measure on a good that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994, the WTO Agreement on Safeguards or the WTO Agreement on Agriculture.
5. Upon the termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect had the measure not been taken.

Article 8.6: Investigation Procedures

1. A Party may impose a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the WTO Agreement on Safeguards, and to this end Articles 3 and 4 of the WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*.
2. The investigation referred to in paragraph 1 shall, as far as possible, be completed within 180 days after being initiated but in no case shall exceed one year.

Article 8.7: Notification

1. A Party shall promptly notify the other Party, in writing, upon:
 - (a) initiating an investigation under Article 8.6;
 - (b) taking a decision to apply, extend or modify a bilateral safeguard measure, or to apply a provisional measure; and
 - (c) taking a decision to progressively liberalise a bilateral safeguard measure previously applied.
2. The Party making the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:
 - (a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of an originating good subject to the investigation and its subheading or a more detailed level of the Harmonised System (HS), the period subject to the investigation and the date of initiation of the investigation; and;
 - (b) in the written notice referred to in subparagraph 1(b), evidence of serious injury or threat thereof caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading or a more detailed level of the Harmonised System (HS), a precise description of the bilateral safeguard measure, the proposed date of its introduction and its expected duration.
3. With reference to the notification referred to in subparagraph 1(b), a Party shall provide to the other Party a copy of the public version of the report of its competent authorities as required under Article 3.1 of the WTO Agreement on Safeguards.

Article 8.8: Compensation

1. The Party taking a bilateral safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the measure. Such consultations shall begin within 30 days of the imposition of the measure.
2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.

Article 8.9: Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2 (a) or (b) of Article 8.4 pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.

2. The Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated not later than seven days after the provisional bilateral safeguard measure is taken.

3. The duration of the provisional bilateral safeguard measure shall not exceed 180 days. During that period, the pertinent requirements of Article 8.6 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 1 of Article 8.5.

4. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in Article 8.6 does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

Article 8.10: Language of Communications

Written notice referred to in Article 8.7 and any other communication between the Parties shall be done in the English language.

Article 8.11: Cooperation

The Parties agree to provide cooperation relating to:

- (a) enhancing each Party's knowledge and understanding of the other Party's trade remedy laws, policies and practices; and

- (b) exchange of information on issues relating to:
 - (i) anti-dumping, safeguards and subsidies and countervailing measures;
 - (ii) international issues relating to the WTO Doha Round Rules negotiations; and
 - (iii) practices by the Parties' competent authorities in anti-dumping, safeguards and subsidies and countervailing investigations.