

CHAPTER 5 TRADE REMEDIES

Section A Bilateral Safeguards

Article 5.1 Definitions

For the purposes of this Section:

- (a) **domestic industry** means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;
- (b) **provisional measure** means a provisional bilateral safeguard measure described in Article 5.5 (Provisional Measures);
- (c) **serious injury** means a significant overall impairment in the position of a domestic industry; and
- (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.

Article 5.2 Application of Bilateral Safeguard Measures

During the transition period, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating product of a Party is being imported into the other Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive products, the other Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure consisting of:

- (a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the originating product from the date on which the action to apply the safeguard measure is taken; or
- (b) an increase of the rate of customs duty on the originating product 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 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 the start of the period of investigation.

Article 5.3

Scope and Duration of Bilateral Safeguard Measures

1. A Party shall apply a bilateral safeguard measure for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. A Party may apply a bilateral safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to two years provided that the conditions of this Chapter are met and that the bilateral safeguard measure continues to be applied to the extent necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The total period of a bilateral safeguard measure, including any extensions thereof, shall not exceed four years.
2. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a product shall terminate at the end of the transition period for such product.
3. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the safeguard measure shall progressively liberalise it at regular intervals during the application of the safeguard measure, including at the time of any extension.
4. No bilateral safeguard measure shall be applied to the import of a product that has previously been subject to such a measure, for a period of at least one year since the expiry of the measure.
5. In case a Party has to apply a safeguard or provisional measure again on the same originating product, the duration of the bilateral safeguard measure shall be less than the duration of the previous safeguard measure.
6. An investigation shall be promptly terminated without any bilateral safeguard measure being applied if imports of the originating product represent less than three per cent of total imports.
7. A Party shall not apply a bilateral safeguard or provisional measure on an originating product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture.
8. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture, a measure on a product to which a bilateral safeguard measure is being applied, it shall terminate the bilateral safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture.

9. On the termination of a bilateral safeguard measure, the Party that applied the measure shall apply the rate of customs duty in effect as set out in its Schedule of Tariff Commitments as specified in Annex 2-1 on the date of termination as if the safeguard measure had never been applied.

10. No bilateral safeguard measure shall be taken beyond the expiration of the transition period that shall be defined as a period from the date of entry into force of this Agreement until seven years from the date of completion of tariff elimination or completion of tariff reduction, as the case may be for each good.

Article 5.4 Investigation

1. A Party may apply or extend a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the WTO Agreement on Safeguards.

2. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a bilateral safeguard measure would be in the public interest.

3. An investigation shall be completed within one year from the date of initiation. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

4. Each Party shall ensure the consistent, transparent, impartial and reasonable administration of its laws, regulations, decisions and rulings relating to all bilateral safeguard investigation proceedings.

Article 5.5 Provisional Measures

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional measure, which shall take the form of the measure set out in paragraphs (a) or (b) of Article 5.2 (Application of Bilateral Safeguard Measures), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating product of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious injury.

2. The duration of such a provisional measure shall not exceed two hundred days during which period the pertinent requirements of Articles 5.1 (Definitions) to 5.4 (Investigation) shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 5.3 (Scope and Duration of Bilateral Safeguard Measures).

3. Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 5.4 (Investigation) does not determine that increased imports of an originating product of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the provisional measure shall apply the rate of customs duty set out in its Schedule of Tariff Commitments in Annex 2-1 as if the provisional measure had never applied.

Article 5.6

Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, upon:
 - (a) initiating an investigation under Article 5.4 (Investigation);
 - (b) making a finding of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty on the product pursuant to this Agreement;
 - (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
 - (d) taking a decision to progressively liberalise a safeguard measure previously applied.
2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under paragraph 1 of Article 5.4 (Investigation) immediately after it is available.
3. In the written notice referred to in paragraph 1(a), the reason for the initiation of the investigation, a precise description of an originating product subject to the investigation and its subheading or more detailed level of the HS, the period subject to the investigation and the date of initiation of the investigation shall be included.
4. In notifying under paragraphs 1(b) and (c), the Party applying or extending a safeguard measure shall also provide evidence of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement; a precise description of the product involved and its subheading or more detailed level of the HS; the details of the proposed safeguard measure; and the date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall to the extent possible provide additional information as the other Party may consider necessary.

5. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable but not less than thirty days before applying such measures, with a view to reviewing the information arising from the investigation and exchanging views on the measure for meeting the objective set out in Article 5.7 (Compensation).

6. Where a Party applies a provisional measure referred to in Article 5.5 (Provisional Measures), on request of the other Party, consultations shall be initiated immediately after such application.

7. The provisions on notification in this Article shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 5.7 Compensation

1. A Party proposing to apply a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to mutually agree on appropriate trade liberalizing compensation in the form of concessions having substantially equivalent trade effects.

2. The Party shall provide an opportunity for such consultations no later than thirty days after the application of definitive bilateral safeguard measure. If these consultations do not result in an agreement on trade liberalizing compensation within thirty days, the Party whose products are subject to the safeguard measure may 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 thirty days before suspending concessions under paragraph 2.

4. The right of suspension provided for in this Article shall not be exercised for the first two years that the bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as the result of an absolute increase in imports.

Section B Anti-Dumping Measures

Article 5.8 Recommendations of the WTO Committee on Anti-Dumping Practices

Each Party may keep in view, in all investigations conducted against goods from the other Party, the recommendations of the WTO Committee on Anti-Dumping Practices.

Article 5.9 Lesser Duty Rule

If a Party takes a decision to impose an anti-dumping duty pursuant to Article 9.1 of the WTO Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement"), it shall apply a duty less than the margin of dumping where such lesser duty would be adequate to remove the injury to the domestic industry.

Article 5.10 Prohibition of Zeroing

When anti-dumping margins are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the Anti-Dumping Agreement regardless of the comparison bases under Article 2.4.2 of the Anti-Dumping Agreement, all individual margins, whether positive or negative, shall be counted while calculating the dumping margin.

Article 5.11 Exemption from Investigation after Termination

1. In case where the investigating authority of the importing Party determines that the anti-dumping measures against imports from the other Party be terminated as a result of the review under Articles 11.2 and 11.3 of the Anti-Dumping Agreement, no investigation shall be initiated on the same goods during one year after the termination of the anti-dumping duties.
2. Notwithstanding paragraph 1, the investigating authority of the importing Party may initiate an investigation in an exceptional case, provided that the authority is satisfied, on the basis of evidence available with it, that dumping or injury has recurred as a result of withdrawal of the duties and that initiation of such an investigation is necessary to prevent material injury or threat thereof to the domestic industry as a consequence of such dumped imports from the exporting Party.

Article 5.12 Cooperation

The Parties may discuss issues related to the implementation of this Chapter in the Joint Committee established under Article 15.1 (Joint Committee), including on the following:

- (a) exchange information and views on laws and regulations relating to trade remedy measures; and
- (b) enhance technical cooperation on trade remedies such as holding seminars and training on human resources as mutually agreed by both Parties.

Section C
General Provisions

Article 5.13
Contact Points

Each Party shall designate a contact point for the purposes of this Chapter and provide details of such contact point to the other Party. The Parties shall notify each other promptly of any amendments to the contact details of their contact point.