

CHAPTER FIVE

TRADE REMEDIES

Section A: General Trade Remedies

Article 5.1 **General Provisions**

1. Each Party shall retain its rights and obligations under the WTO *Agreement on Implementation of Article VI of GATT 1994* (“Anti-Dumping Agreement”), the WTO *Agreement on Subsidies and Countervailing Measures*, Article XIX of GATT 1994 and the WTO *Agreement on Safeguards*.
2. The Parties shall endeavour to carry out any trade remedy actions in a transparent manner.

Article 5.2 **Anti-Dumping Measures**

1. As soon as possible, but no longer than five working days, following the receipt of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of products from the other Party, the Party that has received the properly documented application shall give written notice to the other Party through the Contact Points designated pursuant to this Chapter.
2. Where a Party considers that in accordance with Article 5 of the Anti-Dumping Agreement, there is sufficient evidence to justify the initiation of an anti-dumping investigation, it shall provide the notification required by Article 12.1 of that Agreement in writing to the other Party within five working days of the decision to initiate an investigation.
3. A Party shall respond within ten working days of any request for consultations made in accordance with Article 17.2 of the Anti-Dumping Agreement, in respect of a decision to initiate an investigation. This is without prejudice to the rights of the Parties under Article 17 of the Anti-Dumping Agreement.
4. The time period to be used for determining if the volume of dumped imports is “negligible”, as the term is understood in Article 5.8 of the Anti-Dumping Agreement, shall be either:
 - (a) the period of data collection for the dumping investigation;

- (b) the most recent 12 consecutive months prior to initiation for which data are available; or
- (c) the most recent 12 consecutive months prior to the date on which the application was filed, for which data are available, provided that the lapse of time between the filing of the application and the initiation of the investigation is no longer than 90 days.

5. Each Party shall inform the other Party through their designated Contact Points at the time of entry into force of this Agreement which of the time periods in paragraph 4 they shall use. If in any investigation the chosen methodology is not utilised, one of the two other methodologies shall be adopted and the other Party shall be notified through their Contact Point of the change in methodology, along with an explanation of the reasons for the change. Any Party which adopts the time period mentioned in paragraph 4(c) shall also notify which of the other two time periods they shall use in any case in which the lapse of time between the filing of the application and the initiation of the investigation is longer than 90 days, unless a Party's domestic law prohibits such a lapse.

Article 5.3

Global Safeguards

A Party taking any global safeguard measure pursuant to Article XIX of GATT 1994 and the WTO *Agreement on Safeguards* may exclude imports of an originating product of the other Party from the action where such imports are not a cause of serious injury or threat thereof.

Article 5.4

Contact Points

Each Party shall designate one or more Contact Points for the purposes of this Chapter and provide details of such Contact Points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their Contact Points.

Section B: Transitional Bilateral Safeguards

Article 5.5 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 5.9 (Provisional Measures);
- (c) **Safeguard measure or safeguard measures** means a transitional bilateral safeguard measure or measures described in Article 5.6 (Application of Safeguard Measures);
- (d) **Serious injury** means a significant overall impairment in the position of a domestic industry;
- (e) **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
- (f) **Transition period**, in relation to a particular product, means the period from the entry into force of this Agreement until two years after the date on which the Customs duty on that product is to be eliminated in accordance with Annex 1 (Schedules of Tariff Commitments).

Article 5.6 Application of Safeguard Measures

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 ("MFN") applied rate of Customs duty in effect on the date on which the action to apply the safeguard measure is taken;
 - (ii) the MFN applied rate of Customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
 - (iii) for a new safeguard measure applied from 2016, the preferential tariff rate in effect under this Agreement on the day three years preceding the date on which the action to apply the safeguard measure is taken.

Article 5.7 **Scope and Duration of Safeguard Measures**

1. A Party shall apply a 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 safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to one year provided that the conditions of this Chapter are met and that the 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 safeguard measure, including any extensions thereof, shall not exceed three 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. No new safeguard measure may be applied to a product after the end of the transition period.

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. A Party shall not apply a safeguard or provisional measure again on the same originating product for a period of time equal to the duration of the previous safeguard measure or two years, whichever is longer.

5. A Party shall not apply a 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*. 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 safeguard measure is being applied, it shall terminate the 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*.

6. Each Party shall not apply a safeguard or provisional measure on an originating product imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Tariff Schedule in Annex 1 (Schedules of Tariff Commitments).

7. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of Customs duty in effect as set out in its Tariff Schedule as specified in Annex 1 (Schedules of Tariff Commitments) on the date of termination as if the safeguard measure had never been applied.

Article 5.8

Investigation

1. A Party may apply or extend a 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 safeguard measure would be in the public interest.

3. An investigation shall as far as possible be completed within 180 days after being initiated but in no case shall exceed one year. A Party shall prior to the 180th day notify the other Party of the expected duration of the investigation, if the investigation is likely to take more than 180 days to complete. 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.

Article 5.9

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 Article 5.6(1)(a) or 1(b) (Application of 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 as far as possible not exceed 120 days, but shall not extend beyond 200 days, during which period the pertinent requirements of Articles 5.5 (Definitions) to 5.8 (Investigation) shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 5.7 (Scope and Duration of 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 5.8 (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 Tariff Schedule in Annex 1 (Schedules of Tariff Commitments) as if the provisional measure had never applied.

Article 5.10

Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, upon:
 - (a) initiating an investigation under Article 5.8 (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 Article 5.8(1) (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 safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under paragraph 4, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 5.11(1) (Compensation).

6. Where a Party applies a provisional measure referred to in Article 5.9 (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 5.11 Compensation

1. A Party proposing to apply a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure. Such consultations shall begin within 30 days of the decision to apply the safeguard measure and, in accordance with Article 5.10(5) (Notification and Consultation), shall take place prior to the application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of the consultations, 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 Party exercising the right of suspension shall suspend the application of concessions of Customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained. The right of suspension provided for in this paragraph shall not be exercised for the first year that the safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as the result of an absolute increase in imports and that such a measure conforms to this Section.
5. 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.