

CHAPTER 5

TRADE REMEDIES

SECTION A

General provisions

ARTICLE 5.1

Definitions

For the purposes of this Chapter:

- (a) 'domestic industry' means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (b) 'serious injury' means a significant overall impairment in the position of a domestic industry;
- (c) 'threat of serious injury' means serious injury that is clearly imminent in accordance with the investigation referred to in paragraph 3 of Article 5.4. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and
- (d) 'transition period' means, in relation to a particular originating good, the period beginning on the date of entry into force of this Agreement and ending 10 years after the date of completion of tariff reduction or elimination on that good in accordance with Annex 2-A.

SECTION B

Bilateral safeguard measures

ARTICLE 5.2

Application of bilateral safeguard measures

1. If, as a result of the elimination or reduction of a customs duty in accordance with Article 2.8, an originating good from one Party is being imported into the other Party 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, the other Party may adopt the measures provided for in paragraph 2 to the extent necessary to prevent or remedy the serious injury to the domestic industry of the other Party and to facilitate the adjustment of the domestic industry.

2. Bilateral safeguard measure may consist of:

- (a) the suspension of any further reduction of the rate of customs duty on the originating good provided for in Chapter 2; or
- (b) the increase of the rate of customs duty on the originating good to a level not exceeding the lesser of:
 - (i) most-favoured-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied; and
 - (ii) most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

ARTICLE 5.3

Conditions and limitations

1. No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry, provided that such period of time does not exceed a period of two years. However, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, does not exceed four years.

2. Bilateral safeguard measures may only be applied during the transition period.

3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure exceeds one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.
4. No bilateral safeguard measure shall be applied to the import of a particular originating good which has already been subject to such a bilateral safeguard measure for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.
5. Upon the termination of a bilateral safeguard measure, the rate of customs duty for the originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

ARTICLE 5.4

Investigation

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by its competent authority ⁽¹⁾ in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards.
2. The investigation shall in all cases be completed within one year following its date of initiation.
3. In the investigation to determine whether the increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry, the competent authority which carries out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry. Those factors include, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.
4. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between the increased imports of the originating good and the serious injury or threat of serious injury to the domestic industry. In this determination, factors other than the increased imports of the originating good which are also causing injury to the domestic industry at the same time shall be taken into consideration.

ARTICLE 5.5

Notification

1. A Party shall immediately notify the other Party in writing when it:
 - (a) initiates an investigation referred to in paragraph 1 of Article 5.4 relating to serious injury, or threat of serious injury, and the reasons for it;
 - (b) makes a finding of serious injury, or threat of serious injury, caused by increased imports; and
 - (c) takes a decision to apply or extend a bilateral safeguard measure.
2. The notifying Party referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:
 - (a) in the case of a notification referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading under the Harmonized System, the expected duration of the investigation and the date of initiation of the investigation; and
 - (b) in the case of a notification referred to in subparagraphs 1(b) and (c), evidence of serious injury or threat of serious injury 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 under the Harmonized System, a precise description of the proposed bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.

⁽¹⁾ For the purposes of this Section, for Japan, competent authority includes its relevant authorities.

ARTICLE 5.6

Consultations and compensations

1. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in paragraph 1 of Article 5.4, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation as provided for in this Article.
2. A Party proposing to apply or extend a bilateral safeguard measure shall provide the other Party with mutually agreed adequate means of trade compensation in the form of concessions of customs duties, the value of which is substantially equivalent to that of the additional customs duties expected to result from the bilateral safeguard measure.
3. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations, the Party to whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, the value of which is substantially equivalent to that of the additional customs duties resulting from the bilateral safeguard measure. The Party exercising the right of suspension may 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.
4. Notwithstanding paragraph 3, the right of suspension referred to in that paragraph shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a safeguard measure conforms to the provisions of this Agreement.

ARTICLE 5.7

Provisional bilateral safeguard measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, which shall take the form of a measure set out in subparagraph 2(a) or (b) of Article 5.2, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have caused or are threatening to cause serious injury to a domestic industry of the Party proposing to apply the provisional bilateral safeguard measure.
2. A Party shall notify the other Party in writing of its proposed provisional bilateral safeguard measure no later than at the date of application thereof. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied. The notification shall contain evidence of the existence of critical circumstances, evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed provisional bilateral safeguard measure and its subheading under the Harmonized System, and a precise description of the proposed provisional bilateral safeguard measure.
3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Article 5.4 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as part of the period referred to in paragraph 1 of Article 5.3.
4. Paragraph 5 of Article 5.3 shall apply, *mutatis mutandis*, to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article 5.4 does not determine that the increased imports of the originating good subject to the provisional bilateral safeguard measure have caused or threatened to cause serious injury to a domestic industry.

ARTICLE 5.8

Miscellaneous

The notifications referred to in paragraph 1 of Article 5.5 and paragraph 2 of Article 5.7 and any other communication between the Parties under this Section shall be made in English.

SECTION C

Global safeguard measures

ARTICLE 5.9

General provisions

1. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards.
2. The provisions of this Section shall not be subject to dispute settlement under Chapter 21.

ARTICLE 5.10

Application of safeguard measures

A Party shall not apply or maintain, with respect to the same good, at the same time:

- (a) a bilateral safeguard measure set out in Section B;
- (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards; or
- (c) a safeguard measure set out in Section C of Part 3 of Annex 2-A.

SECTION D

Anti-dumping and countervailing measures

ARTICLE 5.11

General provisions

1. The Parties maintain their rights and obligations under the Agreement on Anti-Dumping and the SCM Agreement.
2. The provisions of this Section shall not be subject to dispute settlement under Chapter 21.
3. Chapter 3 shall not apply to anti-dumping and countervailing measures under this Agreement.

ARTICLE 5.12

Transparency and disclosure of essential facts

1. Each Party shall conduct anti-dumping and countervailing duty investigations in a fair and transparent manner, and based on the Agreement on Anti-Dumping and the SCM Agreement.
2. Each Party shall ensure, before or immediately after any imposition of provisional measures referred to in Article 7 of the Agreement on Anti-Dumping and Article 17 of the SCM Agreement, and in any case before a final determination is made, full disclosure of the essential facts under consideration which form the basis for the decision on whether to apply provisional and definitive measures. The full disclosure of essential facts is without prejudice to the requirements on confidentiality referred to in Article 6.5 of the Agreement on Anti-Dumping and Article 12.4 of the SCM Agreement. Such disclosure shall be made in writing, and should take place in sufficient time for interested parties to defend their interests.
3. The disclosure of the essential facts, which is made in accordance with paragraph 2, shall contain in particular:
 - (a) in the case of an anti-dumping investigation, the margins of dumping established, a sufficiently detailed explanation of the basis and methodology upon which normal values and export prices were established, and of the methodology used in the comparison of the normal values and export prices including any adjustments;
 - (b) in the case of a countervailing duty investigation, the determination of countervailable subsidisation, including sufficient details on the calculation of the amount and methodology followed to determine the existence of subsidisation; and

- (c) information relevant to the determination of injury, including information concerning the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like goods, the detailed methodology used in the calculation of price undercutting, the consequent impact of the dumped imports on the domestic industry, and the demonstration of a causal relationship including the examination of factors other than the dumped imports as referred to in Article 3.5 of the Agreement on Anti-Dumping.

4. In cases in which an investigating authority ⁽¹⁾ of a Party intends to make use of the facts available pursuant to Article 6.8 of the Agreement on Anti-Dumping, the investigating authority shall inform the interested party concerned of its intentions and give a clear indication of the reasons which may lead to the use of the facts available. If, after having been given the opportunity to provide further explanations within a reasonable time period, the explanations given by the interested party concerned are considered by the investigating authority as not being satisfactory, the disclosure of essential facts shall contain a clear indication of the facts available that the investigating authority has used instead.

ARTICLE 5.13

Consideration of public interest

When conducting anti-dumping and countervailing duty investigations on a good, the investigating authority of the importing Party shall, in accordance with its laws and regulations, provide opportunities for producers in the importing Party of the like good, for importers of the good, for industrial users of the good and for representative consumer organisations in cases where the good is commonly sold at the retail level, to submit their views in writing with regard to the anti-dumping and countervailing duty investigation, including concerning the potential impact of a duty on their situation.

ARTICLE 5.14

Anti-dumping investigation

When the investigating authority of the importing Party has received a written application by or on behalf of its domestic industry for the initiation of an anti-dumping investigation in respect of a good from the exporting Party, the importing Party shall notify, at least 10 days in advance of the initiation of such investigation, the exporting Party of such application.

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Objectives

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health through the development, adoption and enforcement of sanitary and phytosanitary measures while minimising their negative effects on trade between the Parties;
- (b) promote cooperation between the Parties on the implementation of the SPS Agreement; and
- (c) provide means for improving communication and cooperation between the Parties, a framework for addressing matters related to the implementation of sanitary and phytosanitary measures, and means for achieving mutually acceptable solutions.

ARTICLE 6.2

Scope of application

This Chapter applies to all sanitary and phytosanitary measures of the Parties under the SPS Agreement that may, directly or indirectly, affect trade between the Parties.

⁽¹⁾ For the purposes of this Section, for Japan, an investigating authority includes its relevant investigating authorities.