

CHAPTER 8

TRADE REMEDIES

Section A **General Provisions**

Article 8.1 **Definitions**

For the purposes of this Chapter:

“bilateral safeguard” means a safeguard referred to in paragraph 2 of Article 8.9 (Adoption of Bilateral Safeguard) that may be, or has been, adopted by a Party in accordance with the rights and obligations set out in Section D;

“customs duty elimination” means any customs duty elimination to occur in accordance with Annex 2A (Schedule of Tariff Commitments for Goods);

“domestic industry” means the producers as a whole of a like or directly competitive good operating within the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of the good;

“serious injury” means a significant overall impairment in the position of a domestic industry;

“threat of serious injury” means a serious injury that is clearly imminent. 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

“transition period” means, in relation to a good, the date of entry into force of this Agreement until five years after the completion of the customs duty elimination in relation to the good.

Article 8.2 **Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under Section B or C.

Section B
Anti-Dumping and Countervailing Duties

Article 8.3
General Provisions

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement.
2. Except as otherwise provided in this Chapter, nothing in this Agreement shall confer any additional rights or impose any additional obligations on the Parties with regard to proceedings or measures taken pursuant to Article VI of GATT 1994, the AD Agreement, or the SCM Agreement.

Article 8.4
Transparency

Notification of anti-dumping or countervailing investigation

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping investigation or a countervailing investigation with respect to imports of a good originating in the territory of the other Party, the Party shall provide written notice to the other Party of its receipt of the application at the earliest possible opportunity before initiating the investigation.

Consultation before countervailing investigation

2. Before initiating a countervailing investigation, the Party shall also afford the other Party a meeting to consult with its investigating authority regarding the application.

Right of interested parties to be heard

3. Upon request of one or more of the interested parties,¹ the Party's investigating authority shall grant them the possibility to be heard in order to express their views during an anti-dumping investigation or a countervailing investigation, provided that the granting of that request does not prevent the investigation from proceeding expeditiously.

Deficient response to information request

4. If a Party's investigating authority determines that a timely response to a request for information does not comply with the request, the investigating

¹ For the purposes of this Article, "interested parties" shall be defined as per Article 6.11 of the AD Agreement and Article 12.9 of the SCM Agreement.

authority shall inform the interested party that submitted the response of the nature of the deficiency and, to the extent practicable in light of the time limit established to complete the anti-dumping investigation or review, or the countervailing investigation or review, provide that interested party with an opportunity to remedy or explain the deficiency.

5. If, after being informed of a deficient response in accordance with paragraph 4, an interested party submits a further response and the investigating authority finds that the response is not satisfactory, or that the response is not submitted within the applicable time limit, and if the investigating authority disregards all or part of the original and subsequent responses, the investigating authority shall explain in the determination or other written document the reasons for disregarding the information.

Written disclosure of essential facts

6. Consistent with Article 6.9 of the AD Agreement and Article 12.8 of the SCM Agreement, a Party's investigating authority shall ensure, before a final determination is made, full and meaningful disclosure of the essential facts under consideration which form the basis for the decision as to whether to adopt a definitive anti-dumping duty or a definitive countervailing duty. That disclosure shall be made in writing.
7. The full disclosure of the essential facts referred to in paragraph 6 is without prejudice to the requirements on confidentiality referred to in Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Interested parties shall have a reasonable opportunity to respond to the disclosure in order that their comments can be addressed in any final determination.

Article 8.5
Lesser Duty

Before a Party adopts an anti-dumping duty or a countervailing duty in relation to imports of a good originating in the territory of the other Party, the Party's investigating authority shall consider, in accordance with the Party's laws and regulations, whether the amount of the anti-dumping duty shall be the full margin of dumping or a lesser amount, or whether the amount of the countervailing duty shall be the full amount of subsidy or a lesser amount.

Article 8.6
Public Interest

To the extent provided for under each Party's laws and regulations, an anti-dumping duty or a countervailing duty shall not be adopted by a Party in relation to imports of a good originating in the territory of the other Party if, on the basis of the information made available during the anti-dumping investigation or the

countervailing investigation, it is concluded that it is not in the public interest to adopt the duty.

Section C

Global Safeguards

Article 8.7

General Provisions

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.
2. Except as otherwise provided in this Section, nothing in this Agreement shall confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Article 8.8

Transparency

A Party that initiates a safeguard investigation shall provide to the other Party an electronic copy of any notification given to the WTO Committee on Safeguards under Article 12.1 of the Safeguards Agreement.

Section D

Bilateral Safeguards

Article 8.9

Adoption of Bilateral Safeguard

1. If, as a result of customs duty elimination, a good originating in the territory of a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause serious injury or threat of serious injury to a domestic industry, the other Party may adopt a safeguard provided for in paragraph 2 to the extent necessary to prevent or remedy the serious injury and to facilitate the adjustment of the domestic industry.
2. In accordance with paragraph 1, the importing Party may adopt one of the following safeguards:
 - (a) suspension of any further customs duty elimination in relation to the good; or

- (b) increase in the customs duty on the good to a level that does not exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty in effect at the time the safeguard is taken; or
 - (ii) the most-favoured-nation applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 8.10

Duration and Scope

1. Neither Party shall maintain a bilateral safeguard for more than the period necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry.
2. The period referred to in paragraph 1 shall not exceed two years (including any adoption of the bilateral safeguard on a provisional basis), except that the period may be extended by no more than two years if the competent authority of the Party that maintains the safeguard determines, in conformity with the procedures specified in this Section, the further period to be necessary to prevent or remedy the serious injury and to facilitate the adjustment of the domestic industry and that there is evidence that the industry is adjusting.
3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard is more than one year, the Party that maintains the safeguard shall progressively liberalise it at regular intervals throughout its duration.
4. Neither Party shall adopt a bilateral safeguard measure (including any bilateral safeguard measure adopted on a provisional basis) to a good that has previously been subject to a bilateral safeguard measure or a bilateral safeguard measure adopted on a provisional basis (“the previous measure”) until the longer of the following periods has passed since the previous measure ceased to apply:
 - (a) a year; or
 - (b) a period equivalent to the duration of the previous measure.
5. When a Party ceases to maintain a bilateral safeguard in relation to a good, the customs duty for the good shall be the customs duty that would have been in effect in accordance with Annex 2A (Schedule of Tariff Commitments for Goods) but for the safeguard.

6. Neither Party shall adopt or maintain a bilateral safeguard after the transition period.

Article 8.11 **Investigation Procedure**

1. A Party shall apply a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with the procedures and requirements provided for in Article 3 and Article 4.2 of the Safeguards Agreement, and to this end Article 3 and Article 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. An investigation shall not exceed one year, but a Party may, in exceptional circumstances, extend the investigation for no more than a further three months. A Party extending an investigation shall notify the other Party in writing of its intention to extend the investigation as soon as possible and, in any event, within one year of the date of initiation of the investigation.

Article 8.12 **Notification and Consultation**

1. A Party shall provide written notice to the other Party immediately after:
 - (a) initiating an investigation referred to in Article 8.11 (Investigation Procedure) relating to serious injury or threat of serious injury;
 - (b) making a finding of serious injury or threat of serious injury caused by increased imports of a good originating in the territory of the other Party as a result of customs duty elimination in relation to the good;
 - (c) taking a decision to adopt or maintain a bilateral safeguard; and
 - (d) taking a decision to modify a bilateral safeguard for progressive liberalisation.
2. The Party providing a 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 the good subject to the investigation (including its subheading in the Harmonized System), the importation period subject to the investigation, and the date of initiation of the investigation; and

- (b) in the written notice referred to in subparagraphs 1(b) to subparagraph 1(d), the evidence of the serious injury or the threat of serious injury caused by the increased imports of the good as a result of customs duty elimination, a precise description of the good subject to the proposed bilateral safeguard (including its subheading in the Harmonized System), a precise description of the bilateral safeguard, and, if applicable, the proposed date of the adoption, extension, or modification of the bilateral safeguard, its expected duration, and the timetable for the progressive liberalisation of the safeguard.
- 3. On request of the Party whose good is subject to a bilateral safeguard proceeding under this Chapter, the Party that is conducting the proceeding shall provide adequate opportunity for prior consultations with the requesting Party, with a view to:
 - (a) reviewing a written notification provided under paragraph 1, including any public notice or report that the competent investigating authority has issued in connection with the proceeding;
 - (b) exchanging views on the proposed or bilateral safeguard measure; and
 - (c) reaching an understanding on compensation as set out in Article 8.14 (Compensation).

Article 8.13

Provisional Adoption of Bilateral Safeguard

- 1. In critical circumstances, a Party may adopt a bilateral safeguard on a provisional basis if:
 - (a) delay would cause damage to a domestic industry that would be difficult to repair; and
 - (b) the Party's competent authority makes a preliminary determination after finding clear evidence that imports of a good originating in the territory of the other Party have increased as the result of customs duty elimination under this Agreement in relation to the good, and that those imports constitute a cause of serious injury or threat of serious injury.
- 2. A Party taking a decision to adopt a bilateral safeguard on a provisional basis shall immediately provide written notice of its decision to the other Party before the provisional bilateral safeguard is applied. Consultation between the Parties on the adoption of the safeguard on a provisional basis shall be initiated immediately after the safeguard is adopted.

3. A bilateral safeguard adopted on a provisional basis shall not be maintained for more than 200 days, during which time the Party shall comply with Article 8.11 (Investigation Procedure).
4. The increase in customs duty paid as a result of the adoption of the bilateral safeguard on a provisional basis shall be promptly refunded if the Party's competent authority, in the investigation referred to in paragraph 1 of Article 8.11 (Investigation Procedure), does not determine that the increase in imports of the good subject to the safeguard has caused serious injury or threat of serious injury.

Article 8.14 Compensation

1. A Party adopting a bilateral safeguard shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect. The Party shall provide an opportunity for those consultations no later than 30 days after the adoption or the extension of the bilateral safeguard.
2. If the consultations under paragraph 1 do not result in the Parties agreeing on trade liberalising compensation no later than 30 days after consultations begin, the other Party may suspend substantially equivalent concessions to the trade of the Party adopting the bilateral safeguard.
3. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall not apply after the cessation of the bilateral safeguard.

Article 8.15 Non-Cumulation

Neither Party shall adopt or maintain in relation to the same good at the same time:

- (a) a bilateral safeguard (including any bilateral safeguard adopted on a provisional basis);
- (b) a measure under Article XIX of GATT 1994, the Safeguards Agreement, or Article 5 of the *Agreement on Agriculture* in Annex 1A to the WTO Agreement; or
- (c) a product specific safeguard measure set out in Annex 2A (Schedule of Tariff Commitments for Goods).