

Chapter 2  
Trade in Goods

Article 13  
Definitions

For the purposes of this Chapter:

- (a) "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 2 of Article 21;
- (b) "customs duty" means any customs or import duty and a charge of any kind, including any form of surtax or surcharge, imposed in connection with the importation of a good, but does not include any:
  - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;
  - (ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, as may be amended, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement, as may be amended; or
  - (iii) fees or other charges commensurate with the cost of services rendered;
- (c) "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;
- (d) "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;

- (e) "export subsidies" means export subsidies listed in subparagraphs 1(a), (b), (c), (d), (e) and (f) of Article 9 of the Agreement on Agriculture in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as "the Agreement on Agriculture");
- (f) "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3;
- (g) "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in subparagraph 9(a) of Article 21;
- (h) "serious injury" means a significant overall impairment in the position of a domestic industry; and
- (i) "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

#### Article 14 Classification of Goods

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

#### Article 15 National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994 which, to this end, is incorporated into and forms part of this Agreement, *mutatis mutandis*.

#### Article 16 Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 1.

2. Except as otherwise provided for in this Agreement, neither Party shall increase any customs duty on originating goods of the other Party from the rate to be applied in accordance with its Schedule in Annex 1.

3. Upon the request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedules in Annex 1, in accordance with the terms and conditions set out in such Schedules.

4. If, as a result of the elimination or reduction of its most-favoured-nation applied rate of customs duty on a particular good, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.

5. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

#### Article 17 Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as "the Agreement on Customs Valuation"), shall apply *mutatis mutandis*.

#### Article 18 Export Duties

Neither Party shall introduce any export duties on goods exported from the Party to the other Party.

#### Article 19 Export Subsidies

Neither Party shall introduce any export subsidies on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture.

Article 20  
Non-tariff Measures

1. Each Party shall not introduce or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement.
2. Each Party shall promote the transparency of its non-tariff measures which are not inconsistent with its obligations under the WTO Agreement.

Article 21  
Bilateral Safeguard Measures

1. Subject to the provisions of this Article, each Party may take a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 16, is being imported into the former Party in such increased quantities, in absolute terms, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry of the former Party.
2. A Party may, as a bilateral safeguard measure:
  - (a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or
  - (b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:
    - (i) the most-favoured-nation applied rate of customs duty in effect at the time when the bilateral safeguard measure is taken; and
    - (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.
  - (a) A Party may take 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 subparagraph 2(c) of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Article as "the Agreement on Safeguards").
  - (b) The investigation referred to in subparagraph (a) shall in all cases be completed within one year following its date of initiation.
  - (c) In the investigation referred to in subparagraph (a) to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Article, the competent authorities of a Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute 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.
  - (d) 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 referred to in subparagraph (a) demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat of serious injury. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.
4. The following conditions and limitations shall apply with regard to a bilateral safeguard measure:
  - (a) A Party shall immediately deliver a written notice to the other Party upon:

- (i) initiating an investigation referred to in subparagraph 3(a) relating to serious injury, or threat of serious injury, and the reasons for it; and
  - (ii) taking a decision to apply or extend a bilateral safeguard measure.
- (b) The Party making the written notice referred to in subparagraph (a), shall provide the other Party with all pertinent information, which shall include:
  - (i) in the written notice referred to in subparagraph (a)(i), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and
  - (ii) in the written notice referred to in subparagraph (a)(ii), 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 of the Harmonized System, a precise description of the bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.
- (c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultation with the other Party with a view to reviewing the information arising from the investigation referred to in subparagraph 3(a), exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 5.

- (d) No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three years. However, in very exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total period of the bilateral safeguard measure, including such extensions, shall not exceed four years. 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.
  - (e) No bilateral safeguard measure shall be applied again to the import of a particular originating good which has 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.
  - (f) Upon the termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the bilateral safeguard measure.
- 5.
- (a) A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose levels are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.
  - (b) If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultation pursuant to subparagraph 4(c), the Party against whose originating good the bilateral safeguard measure is taken shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to 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.

6. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with:

- (a) Article XIX of the GATT 1994 and the Agreement on Safeguards; or
- (b) Article 5 of the Agreement on Agriculture.

7. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to bilateral safeguard measure.

8. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures relating to bilateral safeguard measure.

9. (a) In critical circumstances, where delay would cause damage which it 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) 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.
- (b) A 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 immediately after the provisional bilateral safeguard measure is taken.
- (c) The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of paragraph 3 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph 4(d).

- (d) Subparagraph 4(f) and paragraphs 7 and 8 shall be applied *mutatis mutandis* to a provisional bilateral safeguard measure. The customs duty imposed as a result of a provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in subparagraph 3(a) does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

10. A written notice referred to in subparagraphs 4(a) and 9(b) and any other communication between the Parties shall be done in the English language.

11. The Parties shall review the provisions of this Article, if necessary, after five years of the date of entry into force of this Agreement.

## Article 22 Restrictions to Safeguard the Balance of Payments

1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended.

2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund, as may be amended.

## Chapter 3 Rules of Origin

### Article 23 Definitions

For the purposes of this Chapter:

- (a) "competent governmental authority" means the authority that is responsible for the issuing of a certificate of origin or for the designation of certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry, and in the case of Brunei Darussalam, the Ministry of Foreign Affairs and Trade;