

CHAPTER 5

第五章

TRADE REMEDIES

贸易救济措施

SECTION A

A部分

General provisions

一般规定

ARTICLE 5.1

第5.1条

Definitions

定义

For the purposes of this Chapter:

本章的目的：

- (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.

- (a) "国内产业"是指在一方经营同类或直接竞争产品的生产者整体，或其同类或直接竞争产品的总产量构成该类产品国内总产量主要部分的生产者；
- (b) "严重损害"是指国内产业地位的重大整体损害；
- (c) "严重损害威胁"是指根据第5.4条第3款所述的调查中明显迫近的严重损害。严重损害威胁的认定应基于事实，而不仅基于指控、推测或遥远可能性；和
- (d) "过渡期"是指，对于特定的原产商品，自本协定生效之日起至附件2-A规定的该商品关税减让或消除完成之日起10年的期间。

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 a 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. A 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) the most-favoured-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied; and
- (ii) the most-favoured-nation applied rate of customs duty in effect on 31 January 2019.

B部分

双边保障措施

第5.2条

双边保障措施的应用

1. 如果根据第2.8条消除或减少关税的结果，一方的原产商品以绝对数量或相对于国内生产而言的如此增加的数量，在如此条件下进口到另一方，并造成或威胁造成对国内产业的严重损害，则另一方可以采取第2段规定的措施，以必要程度防止或纠正对另一方国内产业的严重损害，并促进国内产业的调整。
2. 双边保障措施可以包括：
- (a) 暂停对根据第2章提供的原产商品的关税进一步减让；或
- (b) 对原产商品提高关税税率至不超过以下较低者：
- (i) 在双边保障措施适用当日生效的最惠国适用关税税率；和
- (ii) 该 2019年1月31日生效的最惠国适用关税税率。

## 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 5.3

### Conditions and limitations

1. 未经授权不得维持双边保障措施，除非必要以防止或纠正严重损害并促进国内产业调整，且该期限不超过两年。然而，双边保障措施可以延长，但包括此类延长的双边保障措施的总持续时间不得超过四年。
2. 双边保障措施只能在过渡期内适用。
3. 为了促进双边保障措施的预计持续时间超过一年的情况下的调整，维持双边保障措施的一方应当在适用期间内定期逐步放宽双边保障措施。
4. 不得将双边保障措施适用于已受到此类双边保障措施保护一段时间的特定原产商品进口，该时间等于先前双边保障措施的持续时间或一年，以较长者为准。
5. 双边保障措施终止时，受该措施影响的原产商品的关税税率应为该双边保障措施未实施时应适用的税率。

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<sup>1</sup> 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.

<sup>1</sup> For the purposes of this Section, for Japan, competent authority includes its relevant authorities.

ARTICLE 5.4

调查

1. 一方只有在其主管当局<sup>1</sup> 根据保障协定第3条和第4条第2(c)项规定的相同程序进行调查后，方可采取双边保障措施。
2. 调查应在启动日期后一年内以全部完成。
3. 在确定原产商品进口增加是否已对或威胁对国内产业造成严重损害的调查中，主管当局应评估所有与该国内产业状况相关的客观且可量化的因素。这些因素包括，特别是，原产商品进口增加的绝对和相对速率和数量、原产商品进口在国内市场所占份额，以及销售额、生产、生产力、产能利用率、利润和亏损以及就业的变化。
4. 对原产商品进口增加导致或威胁导致国内产业严重损害的认定，除非调查基于客观证据证明原产商品进口增加与国内产业严重损害或严重损害威胁之间存在因果关系，否则不得作出。在此认定中，除原产商品进口增加外，同时导致国内产业损害的其他因素也应予以考虑。

<sup>1</sup> 根据本部分的规定，对于日本，主管当局包括其相关当局。

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, and the date of initiation and the expected duration 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 the expected duration of the proposed bilateral safeguard measure.

ARTICLE 5.5

通知

1. 一方在下列情况下应立即以书面形式通知另一方：
- (a) 发起第5.4条第1款所述的调查，该调查与严重损害或严重损害威胁及其原因相关；
  - (b) 作出因进口增加导致严重损害或严重损害威胁的认定；和
  - (c) 作出采取或延长双边保障措施的决定。
2. 第1款所述的通知方应向另一方提供所有相关信息，包括：
- (a) 对于根据第1项第1目所述的通知，应说明调查的启动原因、受调查的原产商品的精确描述及其在协调制度下的子目，并注明调查的启动日期和预计持续时间；以及
  - (b) 在涉及第1(b)项和(c)项所述通知的情况下，应提供原产商品进口增加所造成的严重损害或严重损害威胁的证据、拟采取的双边保障措施所涉及的原产商品的准确描述及其在协调制度下的子目、拟采取的双边保障措施的准确描述、拟实施日期以及拟采取双边保障措施的预计持续时间。

## 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 bilateral safeguard measure conforms to the provisions of this Agreement.

## ARTICLE 5.6

### 磋商与补偿

1. 一方拟采取或延长双边保障措施时，应给予另一方充分的机会进行事先磋商 以审议第5.4条第1款所述调查所产生的信息、就双边保障措施交换意见，并就本协定规定的补偿达成协议。
2. 一方提出采取或延长双边保障措施时，应向另一方提供双方同意的、以关税减免形式存在的、与预期由双边保障措施产生的额外关税基本等值的贸易补偿的适当手段。
3. 如果各方在磋商开始后30天内未能就补偿达成一致，则对原产商品适用双边保障措施的一方可以自由暂停根据本协定实施的关税减免，其价值与预期由双边保障措施产生的额外关税基本等值。行使暂停权的方可仅暂停实施与预期由双边保障措施产生的额外关税基本等值的关税减免，且仅限于实现基本等值效果所必需的最短期限，并且仅在与双边保障措施持续存在期间进行。
4. 不论第3段如何规定，该段所述的暂停权在双边保障措施生效后的最初24个月内不得行使，前提是该双边保障措施是由于进口绝对增加而采取的，并且该双边保障措施符合本协定规定。

## 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 5.7

### 临时双边保障措施

1. 在紧急情况下，如果延迟将导致难以弥补的损害，一方可依据初步认定存在明确证据，即另一方原产商品的进口增加已造成或威胁造成对该方提议采取临时双边保障措施的国内产业的严重损害，而适用临时双边保障措施，该临时双边保障措施的形式应为第5.2条第2款(a)项或(b)项规定的措施。
2. 一方应以书面形式通知另一方其拟采取的临时双边保障措施，通知不得晚于该措施申请的日期。在临时双边保障措施实施后，双方应立即就临时双边保障措施的实施进行磋商。通知应包含存在紧急情况的证据、由原产商品进口增加所造成的严重损害或严重损害威胁的证据、受拟采取的临时双边保障措施约束的原产商品的精确描述及其在协调制度下的子目，以及拟采取的临时双边保障措施的精确描述。
3. 临时双边保障措施的期限不得超过200天。在此期间，应满足第5.4条的相关要求。临时双边保障措施的期限应计入第5.3条第1段所指的期间内。
4. 第5.3条第5款的规定，*mutatis mutandis*，适用于临时双边保障措施。如第5.4条第1款所述的后续调查未认定临时双边保障措施所适用的原产商品的进口增加已对国内产业造成或威胁造成严重损害，则作为临时双边保障措施所征收的关税应予退还。

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 22.

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

ARTICLE 5.8

Miscellaneous

第5.5条第1款和第5.7条第2款所指的通知以及本部分规定的缔约方之间进行的任何其他通信应以英语作出。

SECTION C

Global safeguard measures

ARTICLE 5.9

General provisions

1. 本章任何规定均不得阻止一方根据1994年关税及贸易总协定第十九条和保障协定，对另一方的原产商品采取保护措施。
2. The pr 本部分的规定不得根据第22章提交争端解决。

ARTICLE 5.10

保护措施的应用

一方不得就同一种产品同时采取或维持：

- (a) B部分中规定的一项双边保障措施；
- (b) GATT 1994第十九条下的措施和保障协定； 或

(c) a safeguard measure set out in Section C of Part 3 of Annex 2-A.

(c) 附件2-A第3部分C部分中规定的一种保护措施。

SECTION D

D部分

Anti-dumping and countervailing measures

反倾销和反补贴措施

ARTICLE 5.11

第5.11条

General provisions

一般规定

- 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 22.
- 3. Chapter 3 shall not apply to anti-dumping and countervailing measures under this Agreement.

- 1. 各方维持其在反倾销协定和贸易技术壁垒协定下的权利和义务。
- 2. 本部分的规定不得根据第22章进行争端解决。
- 3. Chapter 3 不适用于本协定下的反倾销和反补贴措施 t.

ARTICLE 5.12

ARTICLE 5.12

Transparency and disclosure of essential facts

透明度及基本事实的披露

- 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.

- 1. 每一方应以公平和透明的方式开展反倾销和反补贴调查，并依据反倾销协定和贸易技术壁垒协定进行。

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, and 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.

2. 每一方应确保，在反倾销协定第7条和贸易技术壁垒协定第17条所述的任何临时措施实施前或立即实施后，以及在最终裁决作出前，充分披露考虑中的基本事实，这些事实是决定是否采取临时和最终措施的基础。基本事实的充分披露不影响反倾销协定第6.5条和贸易技术壁垒协定第12.4条所述的保密性要求。此类披露应以书面形式进行，并应在有关各方有足够时间维护其利益的时间内进行。

3. 根据第2段作出的基本事实披露，应特别包含：

- (a) 在反倾销调查的情况下，已确定的倾销幅度，以及关于正常价值和出口价格确定依据和方法、以及用于比较正常价值和出口价格的方法（包括任何调整）的充分详细说明；
- (b) 在反补贴调查的情况下，可抵消的补贴的认定，包括关于补贴金额计算和确定补贴存在所遵循方法的足够详细信息；和
- (c) 与损害认定相关的信息，包括有关倾销进口数量以及倾销进口对同类商品国内市场价格影响的信息、计算价格倾销所使用的详细方法、倾销进口对国内产业的随后影响，以及因果关系的证明，包括对第3.5条反倾销协定中所述除倾销进口以外的因素的调查。

4. In cases in which an investigating authority<sup>1</sup> 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.

<sup>1</sup> For the purposes of this Section, for Japan, an investigating authority includes its relevant investigating authorities.

4. 在一方调查当局<sup>1</sup> 打算利用反倾销协定第6.8条规定的可用事实的情况下，调查当局应通知有关利害关系方其意图，并明确说明可能导致使用可用事实的理由。如果有关利害关系方在合理期限内被给予提供进一步解释的机会后，其提供的解释被调查当局认为不满意，则基本事实的披露应明确说明调查当局已使用的可用事实。

ARTICLE 5.13

公共利益之考量

在进行某产品的反倾销和反补贴调查时，进口方调查当局应根据其法律法规，为进口方的同类产品生产商、该产品的进口商、该产品的工业用户以及在零售层面普遍销售该产品的代表性消费者组织提供书面提交其关于反倾销和反补贴调查意见的机会，包括关于关税对其情况潜在影响的意见。

<sup>1</sup> 就本部分而言，对于日本而言，调查当局包括其相关调查当局。

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.

ARTICLE 5.15

Imposition of anti-dumping and countervailing duties ("Lesser duty rule")

The investigating authority of the importing Party may consider whether the amount of the anti-dumping duty or the countervailing duty to be imposed shall be the full margin of dumping or less or the full amount of the subsidy or less, respectively, in accordance with the importing Party's laws and regulations.

ARTICLE 5.14

反倾销调查

当进口方调查当局收到其国内产业代表或代表其提出的关于从出口方进口的某产品的反倾销调查启动的书面申请时，进口方应在该调查启动前至少10天通知出口方该申请。

ARTICLE 5.15

反倾销和反补贴措施的征收（"较低关税规则"）

进口方的调查当局可以根据进口方的法律和法规，考虑是否应征收全额倾销幅度或较低倾销幅度，或全额补贴或较低补贴。