

SECTION C – Bilateral Safeguard Measures

ARTICLE 5.8 – Definitions

For the purposes of this Chapter:

- (a) "bilateral safeguard measure" means a measure as set out in, and applied in accordance with, Article 5.9 (Application of a bilateral safeguard measure);
- (b) "domestic industry" means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;
- (c) "serious injury" means a significant overall impairment in the position of a domestic industry;
- (d) "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;
- (e) "transition period" means:
 - (i) a period of seven years starting from the date of entry into force of this Agreement; or
 - (ii) for goods subject to the preferential tariff treatment set out in Appendix 2-A-1 (Tariff schedule of the European Union) in the form of a tariff rate quota for which a staging period is provided, an additional period of five years commencing immediately after the completion of the staging period.

ARTICLE 5.9 – Application of a bilateral safeguard measure

1. Without prejudice to the rights and obligations of each Party under Section B (Global safeguard measures), if as a result of the reduction, or elimination of a customs duty, or the preferential treatment set out in Appendix 2-A-1 (Tariff schedule of the European Union) in the form of a tariff rate quota under this Agreement, a good originating in a Party and identified in a Party's tariff schedule to this Agreement 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 or threaten to cause serious injury to the domestic industry, the importing Party may apply a bilateral safeguard measure under the conditions and in accordance with the procedures laid down in this Section.
2. A bilateral safeguard measure applied in accordance with paragraph 1 may only consist of one of the following measures:

- (a) suspension of any further reduction of the rate of customs duty or of the preferential treatment set out in Appendix 2-A-1 (Tariff schedule of the European Union) in the form of a tariff rate quota on the good concerned provided for under this Agreement; or
- (b) increase in the rate of customs duty on the good concerned up to a level which does not exceed the lesser of:¹
 - (i) the most-favoured nation applied rate of customs duty on the good in effect on the day when the measure is applied; 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.

3 Without prejudice to paragraph 2, for goods subject to the preferential treatment set out in Appendix 2-A-1 (Tariff schedule of the European Union) in the form of a tariff rate quota under this Agreement, the rate of customs duty shall be set at a level calculated by the importing Party and applicable, if possible, to the quantities necessary to prevent or remedy the situation set out in paragraph 1.

ARTICLE 5.10 – Conditions and limitations

1. A bilateral safeguard measure may only be applied:
 - (a) to the extent, and for such time, as may be necessary to prevent or remedy the situation set out in Articles 5.9 (Application of a bilateral safeguard measure) or 5.13 (Outermost regions) and to facilitate adjustment;
 - (b) for a period not exceeding two years; and
 - (c) during the transition period, except with the consent of the other Party.
2. The period referred to in point (b) of paragraph 1 may be extended by one year if:
 - (a) the competent authorities of the importing Party determine, in accordance with the procedures specified in this Section, that the measure continues to be necessary to prevent or remedy the situations set out in point (a) of paragraph 1 and to facilitate adjustment; and
 - (b) the total period of application of a bilateral safeguard measure, including the period of initial application and any extension thereof, does not exceed three years.

¹ For greater certainty, where the conditions are met to increase the rate of customs duty pursuant to this Article, the rate may be set below the most-favoured-nation applied rate referred to in point (a) or (b).

3. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good concerned, according to the tariff schedule of that Party.
4. In order to facilitate adjustment, in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.
5. A bilateral safeguard measure or provisional measure referred to in this Section shall not be applied to the import of a good originating in a Party that has previously been subject to such a measure for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer. A bilateral safeguard measure shall not be applied more than twice on the same good.
6. A Party shall not apply, with respect to the same good and during the same period more than one of the measures set out below in points a, b and c:
 - (a) a bilateral safeguard measure or a provisional safeguard measure as provided for in this Agreement;
 - (b) a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement; and
 - (c) a special safeguard measure under Article 5 of the Agreement on Agriculture.

ARTICLE 5.11 – Provisional measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, pursuant to a preliminary determination that:
 - (a) there is clear evidence that imports of a good originating in the other Party have increased as a result of the reduction or elimination of a customs duty under this Agreement; and
 - (b) such imports have caused or are threatening to cause serious injury to the domestic industry as set out in Article 5.9 (Application of a bilateral safeguard measure) or serious deterioration in the economic situation of an outermost region as set out in Article 5.13 (Outermost regions).
2. The duration of such a provisional measure shall not exceed 200 days. During this period, the Party applying the provisional measure shall comply with the relevant requirements set out in Article 5.9 (Application of a bilateral safeguard measure), Article 5.10 (Conditions and limitations), Article 5.11 (Provisional measures), Article 5.14 (Procedural rules for bilateral safeguard measures) and Article 5.15 (Notification and consultations).

3. The Party applying the provisional measure shall promptly refund any additional customs duties collected as a result of a provisional measure if the investigation referred to in Article 5.14 (Procedural rules for bilateral safeguard measures) does not result in a finding that the applicable requirements of Article 5.9 (Application of a bilateral safeguard measure), Article 5.10 (Conditions and limitations) or Article 5.13 (Outermost regions) have been met. The duration of any provisional measure shall be counted as part of the period referred to in point (b) of Article 5.10(1) (Conditions and limitations).

4. A Party applying a provisional measure shall notify the other Party before taking a provisional measure and initiate consultations immediately after the measure is taken.

ARTICLE 5.12 – Compensation and suspension of concessions

1. A Party intending 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, which are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.

2. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to Article 5.15(4) (Notification and consultation), the Party to whose originating good the bilateral safeguard measure is applied may suspend the application of substantially equivalent concessions with respect to originating goods of the Party applying 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.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first two years that the safeguard measure is in effect provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and that such a measure conforms to this Section. The limitation on exercising the right of suspension shall not apply when a bilateral safeguard is applied for a second time to the same good.

ARTICLE 5.13 – Outermost regions

1. Notwithstanding Section B (Global safeguard measures) and Article 5.9 (Application of a bilateral safeguard measure), the Union may, in exceptional circumstances and after examining alternative solutions, apply a safeguard measure limited to the territory of an outermost region¹ if,

¹ At the entry into force of this Agreement, the outermost regions of the Union are: Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, St. Martin, the Azores, Madeira and the Canary Islands. This Article shall also apply to a country or an overseas territory that changes its status to an outermost region by a decision of the European Council in accordance with the procedure set out in Article 355 (6) of the TFEU from the date of adoption of that decision. In the event that an outermost region of the Union changes its status as an outermost region by the same procedure, this Article shall cease to be applicable from the date of entry into force of that change, in accordance with the European Council's decision. The Union shall notify Australia of any change in the territories considered as outermost regions of the

as a result of the reduction or elimination of a customs duty under this Agreement, a good originating in Australia and identified in the tariff schedule of the Union is being imported from Australia directly into the territory of an outermost region of the Union in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region concerned.

2. A safeguard measure applied pursuant to this Article shall be applied in accordance with the procedures laid down in this Section. Any reference to "serious injury" in this Section shall be understood as "serious deterioration" for the purposes of this Article.

3. For the purposes of paragraph 1, "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive goods. The determination of deterioration shall be based on objective factors, including the following elements:

- (a) the increase in the volume of imports in absolute or relative terms to domestic production; and
- (b) the effect of such imports on the situation of the relevant industry or the economic sector concerned, including on the levels of sales, production, financial situation and employment.

ARTICLE 5.14 – Procedural rules for bilateral safeguard measures

1. A Party may apply 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 Articles 3 and 4.2(c) of the Safeguards Agreement.

2. In carrying out the investigation referred to in paragraph 1, to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry or serious deterioration in the economic situation of an outermost region under the terms of this Section, 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:

- (a) the rate and amount of the increase in imports of the originating good in absolute and relative terms;
- (b) the share of the domestic market taken by the increased imports of the originating good; and
- (c) the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

3. 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 paragraph 1 demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the originating good and serious injury or threat thereof. If factors other than increased imports of the originating good of the other Party, as a result of the elimination or reduction of a customs duty under this Agreement, 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.

ARTICLE 5.15 – Notification and consultations

1. A Party shall immediately notify the other Party in writing, upon:
 - (a) initiating an investigation under Article 5.14 (Procedural rules for bilateral safeguard measures);
 - (b) making a finding of serious injury or threat thereof caused by increased imports, as set out in Article 5.9 (Application of a bilateral safeguard measure) or serious deterioration in the economic situation of an outermost region or threat thereof, as set out in Article 5.13 (Outermost regions);
 - (c) taking a decision to apply, modify or extend a bilateral safeguard measure; or
 - (d) applying a provisional measure.
2. A Party notifying the other Party pursuant to paragraph 1 shall provide the other Party with all pertinent information, which shall include:
 - (a) in the notification referred to in point (a) of paragraph 1, the reason for the initiation of the investigation, a precise description of the imported good subject to the investigation including its heading or subheading under the Harmonised System, the period of investigation and the date of initiation of the investigation; and
 - (b) in the notification referred to in points (b), (c) and (d) of paragraph 1, evidence of serious injury or threat thereof to the domestic industry caused by increased imports of the imported good as a result of the reduction or elimination of a customs duty pursuant to this Agreement, a precise description of the imported good subject to the bilateral safeguard measure including its heading or subheading under the Harmonized System, the details of the bilateral safeguard measure, and the proposed date of application, duration and, if applicable, a timetable for progressive liberalisation of the measure.
3. In the case of an extension of a bilateral safeguard measure, the Party delivering the notification referred to in paragraph 1 shall also provide the other Party with evidence that the domestic industry concerned is adjusting.

4. A Party intending 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 provided pursuant to paragraphs 2 or 3, exchanging views on the safeguard measure and reaching an understanding on the compensation referred to in Article 5.12 (Compensation and suspension of concessions).
5. The notification and information referred to in paragraphs 2 and 3, and opportunity for consultations referred to in paragraph 4, shall be provided at least 30 days before definitive measures are expected to be applied or extended. No definitive measures shall be applied or extended in the absence of such notification, information, and adequate opportunity for consultations, in accordance with paragraph 4.
6. Upon request, the Party applying or extending a bilateral safeguard measure shall, to the extent possible, provide additional information as the other Party may consider necessary.