

CHAPTER 5

TRADE REMEDIES

Section A: Safeguard Measures

Article 5.1: Definitions

For the purposes of this Section:

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;

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

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;

transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good; and

transitional safeguard measure means a measure described in Article 5.3.2.

Article 5.2: Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement, and any other relevant provisions in the WTO Agreement.
2. This Agreement shall not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Article 5.3: Imposition of Transitional Safeguard Measure

1. A Party may apply a transitional safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of the other Party is being imported into the Party's territory 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 that produces a like or directly competitive good.
2. If the conditions in paragraph 1 are met, the Party may, to the extent necessary to prevent or remedy serious injury and to facilitate adjustment:
 - (a) suspend the further reduction of any rate of customs duty provided for under this Agreement on the good; or
 - (b) increase the rate of customs duty on the 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 the measure is applied; 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. Neither Party shall apply or maintain tariff rate quotas nor quantitative restrictions as transitional safeguard measures.
4. Neither Party shall apply or maintain a transitional safeguard measure to any product imported under a tariff rate quota established by the Party under this Agreement.
5. Neither Party shall apply a transitional safeguard measure against an originating good of the other Party where the exporting Party's share of imports of the originating good in the importing Party does not exceed three per cent.

Article 5.4: Investigation Procedures and Transparency Requirements

A Party shall apply a transitional safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2 of the Safeguards Agreement; to this end, Article 3 and Article 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement *mutatis mutandis*.

Article 5.5: Standards for a Transitional Safeguard Measure

1. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.
2. That period shall not exceed two years, except that the period may be extended by up to one year if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 5.4, that the transitional safeguard measure continues to be necessary to prevent or remedy further or ongoing serious injury and to facilitate adjustment.
3. Neither Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.
4. In order to facilitate adjustment in a situation where the expected duration of a transitional 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. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in the Party's Schedule to Annex 2-B (Tariff Commitments) as if that Party had never applied the transitional safeguard measure.
6. Neither Party shall apply a transitional safeguard measure more than once on the same good.

Article 5.6: Notification and Consultation

1. A Party shall immediately notify the other Party, in writing, if it:
 - (a) initiates a transitional safeguard investigation under this Chapter;
 - (b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, in accordance with Article 5.3;
 - (c) takes a decision to apply or extend a transitional safeguard measure; and
 - (d) takes a decision to modify a transitional safeguard measure previously undertaken.
2. A Party shall make available to the other Party a copy of the public version of the report of its competent authorities that is required under Article 5.4.
3. When a Party makes a notification pursuant to paragraph 1(c) that it is applying or extending a transitional safeguard measure, that Party shall include in that notification:

- (a) evidence of a serious injury, or threat of serious injury, caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement;
- (b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 2-B (Tariff Commitments) are based;
- (c) a precise description of the transitional safeguard measure;
- (d) the date of the transitional safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and
- (e) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of the Party whose good is subject to a proceeding for the application or extension of a transitional safeguard under this Chapter, the other Party shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority issued in connection with that proceeding.

Article 5.7: Compensation

1. A Party applying or extending a transitional safeguard measure shall, in consultation with the other Party, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, a Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the other Party.

3. The Party against whose good the transitional safeguard measure is applied shall notify the other Party in writing at least 30 days before it suspends concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the transitional safeguard measure.

Article 5.8: Relation to other safeguard measures

Neither Party shall apply or maintain two or more of the following measures, with respect to the same good, at the same time:

- (a) a transitional safeguard measure under this Chapter;
- (b) a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement;
- (c) a safeguard measure under the Agreement on Agriculture.

Section B: Antidumping and Countervailing Duties

Article 5.9: Antidumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of GATT 1994 and the WTO Agreement with regard to the application of antidumping and countervailing duties.

2. This Agreement shall not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article VI of GATT 1994 and the WTO Agreement with regard to the application of antidumping and countervailing duties.

3. Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Section.