

CHAPTER 5

TRADE REMEDIES

SECTION A

GENERAL PROVISIONS

ARTICLE 5.1

Non-application of preferential rules of origin

For the purposes of Section B (Anti-dumping and countervailing duties) of this Chapter and Section C (Global safeguard measures) of this Chapter, the preferential rules of origin under Chapter 3 (Rules of origin and origin procedures) do not apply.

ARTICLE 5.2

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to Section B (Anti-dumping and countervailing duties) of this Chapter and Section C (Global safeguard measures) of this Chapter.

SECTION B

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 5.3

Transparency

1. Trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.
2. Without prejudice to Article 6.5 of the Anti-dumping Agreement and Article 12.4 of the SCM Agreement, each Party shall ensure as soon as possible after any imposition of provisional measures and before a final determination is made, full and meaningful disclosure of all essential facts and considerations on which a decision to apply definitive measures is based. Disclosures shall be made in writing and allow interested parties sufficient time to make their comments.
3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party shall be granted the possibility to be heard in order to express their views during trade remedy investigations.

ARTICLE 5.4

Consideration of public interest

1. A Party may refrain from applying anti-dumping or countervailing measures on the goods of the other Party if, on the basis of the information made available during the investigation pursuant to the requirements under the laws and regulations of that Party, it can be concluded that it is not in the public interest to apply such measures.
2. When making a final determination on the imposition of duties, each Party shall, in accordance with its laws and regulations, take into account information provided by relevant interested parties, which may include the domestic industry, importers and their representative associations, representative users and representative consumer organisations.

ARTICLE 5.5

Lesser duty rule

If a Party imposes an anti-dumping duty on the goods of the other Party, the amount of such duty shall not exceed the margin of dumping. If a duty the amount of which is less than the margin of dumping is sufficient to remove the injury to the domestic industry, the Party shall adopt such lesser duty in accordance with its laws and regulations.

SECTION C

GLOBAL SAFEGUARD MEASURES

ARTICLE 5.6

Transparency

1. At the request of the other Party, the Party initiating a global safeguard investigation or intending to apply global safeguard measures shall provide immediately a written notification of all pertinent information leading to the initiation of a global safeguard investigation or the imposition of global safeguard measures, including on provisional findings, if relevant. This is without prejudice to Article 3.2 of the Agreement on Safeguards.
2. Each Party shall endeavour to impose global safeguard measures in a way that least affects trade between the Parties.
3. For the purposes of paragraph 2, if a Party considers that the legal requirements are met for the imposition of definitive global safeguard measures, the Party intending to apply such measures shall notify the other Party and shall endeavour to provide adequate opportunity for prior consultations with that Party, with a view to reviewing the information provided under paragraph 1 and exchanging views on the proposed global safeguard measures before a final decision is adopted.

SECTION D

BILATERAL SAFEGUARD MEASURES

ARTICLE 5.7

Definitions

For the purposes of this Section, the following definitions apply:

- (a) "bilateral safeguard measure" means a bilateral safeguard measure specified in Article 5.8 (Application of a bilateral safeguard measure);
- (b) "domestic industry" with respect to an imported good, means the producers as a whole of the like or directly competitive goods operating in the territory of a Party, or the producers whose collective production of the like or directly competitive goods constitutes a major proportion of the total domestic production of such goods;
- (c) "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive goods;
- (d) "serious injury" means a significant overall impairment in the position of a domestic industry;

- (e) "threat of serious deterioration" means a serious deterioration that is clearly imminent on the basis of facts and not merely on allegation, conjecture or remote possibility;
- (f) "threat of serious injury" means a serious injury that is clearly imminent on the basis of facts and not merely on allegation, conjecture or remote possibility; and
- (g) "transition period" means a period of seven years starting from the date of entry into force of this Agreement.

ARTICLE 5.8

Application of a bilateral safeguard measure

1. Without prejudice to the Parties' rights and obligations under Section C (Global safeguard measures) of this Chapter, if, as a result of the reduction or elimination of a customs duty under this Agreement, a good originating in 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 or threaten to cause serious injury to the domestic industry of the other Party, that other Party may apply a bilateral safeguard measure during the transition period and only in accordance with the conditions and procedures laid down in this Section.
2. Bilateral safeguard measures applied pursuant to paragraph 1 may only consist of:
 - (a) the suspension of any further reduction of the rate of customs duty on the good concerned in accordance with Chapter 2 (National treatment and market access for goods); or

- (b) the increase of the rate of customs duty on the good concerned to a level which does not exceed 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; or
 - (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.

ARTICLE 5.9

Standards for a bilateral safeguard measure

1. A bilateral safeguard measure shall not be applied:
 - (a) except to the extent, and for such time, as may be necessary to prevent or remedy the serious injury or the threat of serious injury to the domestic industry or the serious deterioration or the threat of serious deterioration in the economic situation of the outermost region or regions;
 - (b) for a period exceeding two years; and
 - (c) beyond the expiration of the transition period.

2. The period referred to in point (b) of paragraph 1 may be extended by one year provided that:

- (a) the competent investigating authorities of the importing Party determine, in conformity with the procedures specified in Sub-Section 1 (Procedural rules applicable to bilateral safeguard measures), that the bilateral safeguard measure continues to be necessary to prevent or remedy the serious injury or the threat of serious injury to the domestic industry or the serious deterioration or the threat of serious deterioration in the economic situation of the outermost region or regions; and
- (b) there is evidence that the domestic industry is adjusting and 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.

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, in accordance with Annex 2-A (Tariff elimination schedules).

4. A bilateral safeguard measure shall not be applied to the import of a good of a Party which has already been subject to such a bilateral safeguard measure for a period of time equal to half of the duration of the previous bilateral safeguard measure.

5. A Party shall not apply to the same good and at the same time:

- (a) a provisional bilateral safeguard measure, a bilateral safeguard measure or an outermost regions safeguard measure pursuant to this Agreement; and

- (b) a safeguard measure pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards.

ARTICLE 5.10

Provisional bilateral safeguard measures

1. In critical circumstances, where delay would cause damage that would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, pursuant to a preliminary determination that 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 that such imports cause serious injury or the threat of serious injury to the domestic industry or serious deterioration or the threat of serious deterioration in the economic situation of the outermost region or regions.
2. The duration of any provisional bilateral safeguard measure shall not exceed 200 days. During this period, the Party shall comply with the relevant procedural rules laid down in Sub-Section 1 (Procedural rules applicable to bilateral safeguard measures).
3. The customs duty imposed as a result of the provisional bilateral safeguard measure shall promptly be refunded if the subsequent investigation referred to in Sub-Section 1 (Procedural rules applicable to bilateral safeguard measures) does not determine that the increased imports of the good subject to the provisional bilateral safeguard measure cause serious injury or the threat of serious injury to the domestic industry or serious deterioration or the threat of serious deterioration in the economic situation of the outermost region or regions.

4. The duration of any provisional bilateral safeguard measure shall be counted as part of the period laid down in point (b) of Article 5.9(1) (Standards for a bilateral safeguard measure).

5. The Party applying a provisional bilateral safeguard measure shall inform the other Party immediately upon applying such a provisional bilateral safeguard measure.

6. At the request of the other Party, consultations shall be held immediately after the application of the provisional bilateral safeguard measure.

ARTICLE 5.11

Outermost regions

1. Where any product originating in New Zealand is being directly imported into the territory of one or several outermost regions of the Union¹ in such increased quantities and under such conditions as to cause serious deterioration or the threat of serious deterioration in the economic situation of the outermost region or regions concerned, the Union, after having examined alternative solutions, may exceptionally apply bilateral safeguard measures limited to the territory of the outermost region or regions concerned.

¹ On the date of entry into force of this Agreement, the outermost regions of the Union are Guadeloupe, French Guiana, Martinique, Reunion, 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 in accordance with the same procedure, Article 5.11 (Outermost regions) shall cease to be applicable from the date of entry into force of the relevant decision of the European Council. The Union shall notify New Zealand of any change concerning the status of the territories considered as outermost regions of the Union.

2. For the purposes of paragraph 1, the determination of serious 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 the domestic production and to the imports from other sources; 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.

3. Without prejudice to paragraph 1, this Section applies to any safeguard measure adopted under this Article, *mutatis mutandis*.

ARTICLE 5.12

Compensation and suspension of concessions

1. No later than 30 days after the date of the application of the bilateral safeguard measure, the Party applying that measure shall provide an opportunity for consultations with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the first day of those consultations, the Party to whose originating good the bilateral safeguard measure is applied may suspend the application of concessions having substantially equivalent trade effect in respect of the Party applying the bilateral safeguard measure.

3. The obligation to provide concessions as referred to in paragraph 1 and the right to suspend those concessions under paragraph 2 shall apply only as long as the bilateral safeguard measure is maintained.

4. Notwithstanding paragraph 3, the right to suspend 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 applied as a result of an absolute increase in imports and provided that the bilateral safeguard measure is in conformity with this Agreement.

SUB-SECTION 1

PROCEDURAL RULES APPLICABLE TO BILATERAL SAFEGUARD MEASURES

ARTICLE 5.13

Applicable law

This Sub-Section applies to bilateral safeguard measures which are covered by Section D (Bilateral safeguard measures) of this Chapter and applied by the competent investigating authority of a Party. In cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under its domestic legislation provided that those rules are in conformity with this Section.

ARTICLE 5.14

Investigation procedures

1. A Party shall apply a bilateral safeguard measure only after an investigation has been carried out by its competent investigating authorities in accordance with Article 3 and Article 4(2), points (a) and (c), of the Agreement on Safeguards. To that end, Article 3 and Article 4(2), points (a) and (c), of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. In order to apply a bilateral safeguard measure, the competent investigating authority shall demonstrate on the basis of objective evidence the existence of a causal link between the increased imports of the product concerned and the serious injury or the threat of serious injury or the existence of a causal link between the increased imports of the product concerned and the serious deterioration or the threat of serious deterioration. The competent investigating authority shall also examine known factors other than the increased imports to ensure that the injury caused by such other factors is not attributed to the increased imports.
3. The investigation shall in all cases be completed within one year after the date of its initiation.

ARTICLE 5.15

Notification and consultation

1. A Party shall promptly notify the other Party in writing if it:
 - (a) initiates a bilateral safeguard investigation under this Chapter;

- (b) determines that the increased imports cause serious injury or the threat of serious injury or serious deterioration or the threat of serious deterioration in the economic situation of the outermost region or regions;
- (c) decides to apply a provisional bilateral safeguard measure, or to apply or extend a bilateral safeguard measure; or
- (d) decides to modify a bilateral safeguard measure previously adopted.

2. A Party shall provide to the other Party a copy of the public version of the complaint and the report of its competent investigating authorities that is required under Article 3 of the Agreement on Safeguards.

3. When a Party notifies the other Party that it has decided to apply or extend a bilateral safeguard measure as referred to in point (c) of paragraph 1, that Party shall include in its notification all pertinent information, such as:

- (a) evidence that, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, the increased imports of the good of the other Party are causing serious injury or the threat of serious injury to the domestic industry or serious deterioration or the threat of serious deterioration in the economic situation of the outermost region or regions;
- (b) a precise description of the good subject to the bilateral safeguard measure, including its heading or subheading under the HS on which Annex 2-A (Tariff elimination schedules) is based;

- (c) a precise description of the bilateral safeguard measure;
- (d) the date of application of the bilateral safeguard measure, its expected duration and, if applicable, a timetable for progressive liberalisation of that measure; and
- (e) in the case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of the Party whose good is subject to a bilateral safeguard proceeding under this Chapter, the Party that conducts that proceeding shall provide adequate opportunity for consultations with the requesting Party before a final decision to apply bilateral safeguard measures is taken, with a view to reviewing a notification as referred to in paragraph 1 of this Article or any public notice or report that the competent investigating authority issued in connection with the proceeding, and exchanging views on the proposed measure and reaching an understanding on compensation provided for in Article 5.12 (Compensation and suspension of concessions).

