

**CHAPTER 5**  
**TRADE REMEDIES**

**Section A: Anti-dumping, Subsidies and Countervailing Measures**

**Article 5.1**  
**Anti-Dumping Measures**

Nothing in this Agreement affects the rights and obligations of the Parties under Article VI of GATT 1994 and the Anti-Dumping Agreement with regard to the application of anti-dumping measures.

**Article 5.2**  
**Subsidies and Countervailing Measures**

Nothing in this Agreement affects the rights and obligations of the Parties under Article VI of GATT 1994 and the SCM Agreement with regard to the application of countervailing duty measures.

**Article 5.3**  
**Lesser Duty Rule**

If a Party takes a decision to impose anti-dumping or countervailing duty, it may consider applying a duty less than the margin of dumping or the amount of the subsidy, as relevant, where such lesser duty would be adequate to remove the injury to the domestic industry in accordance with the Party's laws and regulations.

**Section B: Global Safeguard Measures**

**Article 5.4**  
**Global Safeguard Measures**

Nothing in this Agreement affects the rights and obligations of the Parties under Article XIX of GATT 1994, and the Safeguards Agreement.

## **Section C Bilateral Safeguard Measures**

### **Article 5.5 Definitions**

For the purposes of this Section:

- (a) **“bilateral safeguard measure”** means a measure referred to in paragraph 2 of Article 5.6 (Application of a Bilateral Safeguard Measure);
- (b) **“domestic industry”** means, with respect to an imported good, the producers as a whole of a like or directly competitive good operating within the territory of a Party, or those producers whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of the good;
- (c) **“elimination or reduction of a customs duty”** means any elimination or reduction of customs duty in accordance with paragraph 1 of Article 2.3 (Elimination or Reduction of Customs Duties);
- (d) **“serious injury”** means a significant overall impairment in the position of a domestic industry;
- (e) **“threat of serious injury”** means a serious injury that is clearly imminent. 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
- (f) **“transition period”** means, in relation to a good, the period from the date of entry into force of this Agreement until 14 years after the date on which the elimination or reduction of the customs duty on that good is completed.

### **Article 5.6 Application of a Bilateral Safeguard Measure**

1. If, as a result of the elimination or reduction of a customs duty under this Agreement, an originating good from 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 a domestic industry producing a like or directly competitive good, the other Party may during the transition period, apply either of the bilateral measures provided for in paragraph 2.

2. If the conditions in paragraph 1 are met, the importing Party may apply one of the following bilateral safeguard measures:
  - (a) suspension of the further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or
  - (b) increase in 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 on the good in effect at the time the bilateral safeguard measure is applied; and
    - (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. Neither Party shall apply or maintain a bilateral safeguard measure or provisional bilateral safeguard measure under this Chapter to any good imported under a tariff rate quota established by the Party under this Agreement.

#### **Article 5.7** **Conditions and Limitations**

1. A Party may apply a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with the procedures and requirements provided for in Articles 3 and 4.2 of the Safeguards Agreement, and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. A Party shall notify the other Party immediately in writing upon it initiating an investigation described in paragraph 1 and shall provide adequate opportunity for prior consultations with the other Party in advance of applying a bilateral safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.
3. Each Party shall ensure that its competent authorities complete any such investigation within one year of the date of its initiation.
4. Neither Party shall apply or maintain a bilateral safeguard measure:
  - (a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry;
  - (b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of

the applying Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry and that there is evidence that the industry is adjusting.

5. Regardless of its duration, any bilateral safeguard measure or provisional bilateral safeguard measure shall terminate at the end of the transition period.
6. No bilateral safeguard measure shall be applied again to the import of a good which has been previously subject to such a measure, for a period of time equal to that during which such measure was applied, or one year since the expiry of such measure, whichever is longer.
7. Notwithstanding the provisions of paragraph 6, a bilateral safeguard measure with a duration of 180 days or less may be applied again to the import of a good if:
  - (a) at least one year has elapsed since the date of introduction of a bilateral safeguard measure on the import of that good; and
  - (b) a bilateral safeguard measure has not been applied on the same good more than twice in the five-year period immediately preceding the date of the first imposition of the bilateral safeguard measure.
8. A Party shall not apply a bilateral safeguard measure or provisional bilateral safeguard measure on a good that is subject to a global safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement. A Party shall not continue to maintain a bilateral safeguard measure or provisional bilateral safeguard measure on a good that becomes subject to a global safeguard measure.
9. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is more than one year, the Party that applies the measure shall progressively liberalise it at regular intervals during its period of application.
10. 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 in accordance with the Party's Schedule to Annex 2A (Schedules of Tariff Commitments for Goods) but for the bilateral safeguard measure.

### **Article 5.8 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 by its competent

authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and have caused serious injury, or threat of serious injury, to its domestic industry.

2. Before applying a provisional bilateral safeguard measure the applying Party shall notify the other Party of the preliminary determination and shall immediately initiate consultations after applying the provisional bilateral safeguard measure.
3. A provisional bilateral safeguard measure shall not be maintained for more than 200 days, during which time the applying Party shall comply with Article 5.6 (Application of a Bilateral Safeguard Measure) and Article 5.7 (Conditions and Limitations).
4. The applying Party shall refund promptly any increase in customs duty paid as a result of the adoption of the provisional bilateral safeguard measure if the applying Party's investigating authority determines that the requirements of paragraph 1 of Article 5.6 (Application of a Bilateral Safeguard Measure) are not met.
5. The duration of any provisional bilateral safeguard measure shall be counted as part of the period described in subparagraph 4(b) of Article 5.7 (Conditions and Limitations).

### **Article 5.9 Compensation**

1. A Party applying a bilateral safeguard shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect or equivalent to the value of the additional duties expected to result from the application of the bilateral safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application or the extension of the bilateral safeguard.
2. If the consultations under paragraph 1 do not result in the Parties agreeing on trade liberalising compensation no later than 30 days after consultations begin, the Party whose goods are subject to the bilateral safeguard measure may suspend substantially equivalent concessions to the trade of the Party applying the bilateral safeguard. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.
3. The right to take action referred to in paragraph 2 shall not be exercised for the first two years that the measure is in effect, which includes the

period of time that any provisional bilateral safeguard measure has been in effect.

**Article 5.10**  
**Agricultural Safeguards**

Originating agricultural goods from a Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture.

**Article 5.11**  
**Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under Section A or B of this Chapter.