

CHAPTER 4 TRADE REMEDIES

Section A General Provisions

Article 4.1 Definitions

For the purposes of this Chapter:

“bilateral safeguard measure” means a measure referred to in paragraph 2 of Article 4.7 (Application of a Bilateral Safeguard Measure);

“elimination or reduction of a customs duty” means any elimination or reduction of customs duty in accordance with paragraph 1 of Article 2.6 (Treatment of Customs Duties – Trade in Goods);

in determining injury or threat thereof, a **“domestic industry”** means the producers as a whole of the like or directly competitive goods operating within the territory of 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;

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

“threat of serious injury” means serious injury that is clearly imminent and is determined on the basis of facts and not merely on allegation, conjecture or remote possibility; and

“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 14 years after the date of completion of the elimination or reduction of a customs duty on that particular originating good in accordance with Annex 2A (Schedules of Tariff Commitments for Goods).

Article 4.2 Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under Section B or Section C.

Section B
Anti-Dumping and Countervailing Measures

Article 4.3
General Provisions

The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.

Article 4.4
Investigations

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping or a countervailing investigation with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application.
2. Before initiating a countervailing investigation, a Party shall afford the other Party a meeting to consult with its investigating authority regarding the application.
3. The Parties reaffirm their rights and obligations under Articles 6.2 and 6.3 of the Anti-Dumping Agreement and Article 12.2 of the SCM Agreement, including with respect to the rights of interested parties to present information orally and to defend their interests in the conduct of an anti-dumping investigation or a countervailing duty investigation.
4. Notwithstanding paragraphs 2 and 3, nothing shall prevent the investigating authority from proceeding to initiate and conduct the investigation expeditiously.
5. A Party shall ensure, before a final determination is made, disclosure of the essential facts under consideration which form the basis for the decision whether to apply final measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement.

Article 4.5
Lesser Duty Rule and Public Interest Test

1. Should a Party decide to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, or countervailing duty pursuant to Article 19.2 of the SCM Agreement, it shall apply a duty less than the margin of dumping or subsidy margin, if such a lesser duty would be adequate to remove the injury to the domestic industry, in accordance with the Party's laws and regulations.

2. To the extent provided for under each Party's laws, regulations and procedures, an anti-dumping duty or a countervailing duty shall not be applied by a Party on the goods of the other Party if it is concluded that it is not in the public interest to apply the duty.

Section C

Global Safeguard Measures

Article 4.6

General Provisions and Transparency

1. The Parties affirm their rights and obligations concerning global safeguard measures under Article XIX of GATT 1994 and the Agreement on Safeguards.
2. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of any notification given to the WTO Committee on Safeguards under Article 12.1 of the Agreement on Safeguards.
3. A Party adopting global safeguard measures shall endeavour to impose them in a manner least affecting bilateral trade.

Section D

Bilateral Safeguard Measures

Article 4.7

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, the other Party may adopt 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; 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.

Article 4.8 **Duration and Scope**

1. A Party shall apply a bilateral safeguard measure to the extent and only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry.
2. The period of time referred to in paragraph 1 shall not exceed two years, except where the period may be extended for an additional period of no more than two years, provided that the investigating authority of the Party that applies the bilateral safeguard measure determines, in conformity with the procedures set out in Article 4.9 (Investigation Procedures) that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment, and provided that the total duration of the bilateral safeguard measure, including such extensions, does not exceed four years.
3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure exceeds one year, the Party that applies the bilateral safeguard measure shall progressively liberalise it at regular intervals during the period of application.
4. No bilateral safeguard measure shall be applied again to the import of an originating good that has previously 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 since the expiry or termination of the previous bilateral safeguard measure, whichever is longer.
5. Notwithstanding paragraph 4, a bilateral safeguard measure with a duration of 180 days or less may be applied again to the import of an originating 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.
6. 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.
7. Neither Party shall apply or maintain a bilateral safeguard measure beyond the expiration of the transition period.

Article 4.9

Investigation Procedures

1. A Party may apply a bilateral safeguard measure (other than on a provisional basis) only following an investigation by its investigating authority pursuant to the procedures set out in this Article. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the representations of other interested parties and to submit their views, among other things, as to whether or not the application of a bilateral safeguard measure would be in the public interest. The investigating authority shall publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law, including a detailed analysis of the case under investigation, as well as a demonstration of the relevance of factors examined in accordance with paragraph 2.
2. In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the investigating authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular, the rate and amount of the increase in imports of the good concerned in absolute and relative terms, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.
3. The determination referred to in paragraph 2 shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the good concerned and serious injury or threat thereof. Where factors other than increased imports are at the same time causing serious injury or threat thereof, such injury shall not be attributed to increased imports.
4. Any information which is by its nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the investigating authority. Such information shall not be disclosed without permission of the party submitting it. A party providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the investigating authority finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the investigating authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.
5. An investigation shall not exceed one year from the date of initiation, but a Party may, in exceptional circumstances, extend the investigation for no more than a further three months. A Party extending an investigation shall notify the other Party in writing of its intention to extend the investigation as soon as possible and, in any event, within one year of the date of initiation of the investigation.

Article 4.10
Notification and Consultation

1. A Party shall immediately provide written notice to the other Party upon:
 - (a) initiating an investigation referred to in Article 4.9 (Investigation Procedures) relating to serious injury, or threat thereof, and the reasons for it;
 - (b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 4.7 (Application of a Bilateral Safeguard Measure);
 - (c) taking a decision to apply or extend a bilateral safeguard measure; or
 - (d) taking a decision to modify the bilateral safeguard measure for progressive liberalisation.
2. The Party proposing to apply a bilateral safeguard measure shall provide the other Party with all pertinent information which shall include:
 - (a) in the written notice 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 including its subheading of the Harmonized System (for indicative purposes only), the period subject to the investigation, and the date of initiation of the investigation; and
 - (b) in the written notice referred to in subparagraphs 1(b) through (d), evidence of serious injury or threat thereof caused by the increased imports, precise description of the good subject to the proposed bilateral safeguard measure including its subheading of the Harmonized System (for indicative purposes only), and where applicable, the proposed date of introduction, the extension or modification of the bilateral safeguard measure, its expected duration, and the timetable for the progressive liberalisation of the bilateral safeguard measure provided for in paragraph 3 of Article 4.8 (Duration and Scope).
3. A Party initiating an investigation shall, after notifying the other Party in accordance with paragraph 1, consult with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.

Article 4.11
Provisional Bilateral Safeguard 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 without complying with the procedural requirements of

Article 4.10 (Notification and Consultation), pursuant to a preliminary determination that there is clear evidence that imports of a good originating in the other Party have increased as the result of the elimination or reduction of a customs duty under this Agreement, and that such imports cause or threaten to cause serious injury to the domestic industry. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the Party shall comply with the relevant procedural rules laid down in Article 4.9 (Investigation Procedures) such that its investigating authority carries out an investigation.

2. A Party shall make a notification to the other Party before taking a provisional bilateral safeguard measure referred to in paragraph 1.
3. 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.
4. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in Article 4.9 (Investigation Procedures) does not determine that the requirements of paragraph 1 of Article 4.7 (Application of a Bilateral Safeguard Measure) are met.
5. The duration of any provisional bilateral safeguard measure shall be counted as part of the period described in paragraph 2 of Article 4.8 (Duration and Scope).

Article 4.12 Compensation

1. A Party applying a bilateral safeguard measure 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 applying the bilateral safeguard measure shall provide an opportunity for these consultations no later than 30 days after the application of the bilateral safeguard measure.
2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure. 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 bilateral safeguard measure is in effect.

4. The Party against whose good the bilateral safeguard measure is applied shall notify the Party applying the bilateral safeguard measure in writing at least 30 days before suspending concessions in accordance with paragraph 2.
5. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminate on the termination of the bilateral safeguard measure.

Article 4.13
Non-Application of Multiple Safeguard Measures

1. Neither Party shall apply, with respect to the same good, at the same time:
 - (a) a bilateral safeguard measure in accordance with Section D (Bilateral Safeguard Measures); and
 - (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards.