

CHAPTER 5 TRADE REMEDIES

Section A: Bilateral Safeguard Measures

Article 5.1: Definitions

For the purposes of this Chapter:

competent investigating authority means:

- (i) for Viet Nam, Trade Remedies Authority, in the Ministry of Industry and Trade;
- (ii) for Israel, the Commissioner of Trade Levies, in the Ministry of Economy and Industry or the corresponding unit in the Ministry of Agriculture and Rural Development;

or their successors;

domestic industry means the producers as a whole of the like or directly competitive goods of a Party or whose collective output of the like or directly competitive goods constitutes a major proportion of the total production of such goods;

originating goods as defined in Chapter 3 (Rules of Origin);

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

threat of serious injury means serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility.

transition period means, in relation to particular goods, the three year period beginning on the date of entry into force of this Agreement, except where the tariff elimination or reduction 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.

Article 5.2: Application of a Bilateral Safeguard Measure

1. Subject to Article 5.8 (Imposition of Global Safeguard Measures) of this Chapter, a Party may apply a bilateral safeguard measure:

- (a) only during the transition period; and
- (b) if as a result of the reduction or elimination of a duty pursuant to this Agreement, an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of the originating good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic

industry.

2. If the conditions set out in paragraph 1 are met, a Party may to the minimum extent necessary to prevent or remedy serious injury, or threat thereof:
 - (a) suspend the further reduction of any rate of a customs duty provided for under this Agreement on the goods; or
 - (b) increase the rate of duty on the good to a level not to exceed the lesser of :
 - (i) the most-favoured-nation (MFN) applied rate of duty in effect at the time the measure is applied, or
 - (ii) the base rate as specified in the schedule to Annex 2B (Reduction or Elimination of Customs Duties)
3. A Party that applies a bilateral safeguard measure under subparagraph 2(b) of this Article may consider to minimize the negative impacts of the measure on bilateral trade by establishing a tariff quota for the product concerned under the agreed preference established in this Agreement.
 - (a) The tariff quota shall not be less than the average imports of the product concerned in the 36 months prior to the period used for determining the existence of serious injury.
 - (b) The amount of goods included in the tariff quota may be imported under the rate provided in the Annex 2B (Reduction or Elimination of Customs Duties).
 - (c) The amount of goods beyond the tariff quota may be imported under the rate of duty established in subparagraph 2 (b) of this Article.

Article 5.3: Limitations for Applying a Bilateral Safeguard Measure

1. Bilateral safeguard measures shall not be applied in the first year of the transition period.
2. A bilateral safeguard measure shall not be applied except to the minimum extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment and, it shall not be applied for a period exceeding two years.

However, this period may be extended for up to one additional year if the competent authorities of the importing Party determine, in conformity with the procedures specified in Article 5.4 (Investigation Procedures), that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years. The Party maintaining the measure beyond a one year period shall progressively liberalise it at annual intervals during the period of application.

3. Neither Party shall apply a bilateral safeguard measure more than once against the same

good.

4. Upon termination of the bilateral safeguard measure, the rate of duty shall be the level which would have been in effect had the measure not been imposed. If a tariff quota was applied as a bilateral safeguard measure, it will be eliminated upon termination of the bilateral safeguard measure.

5. Bilateral safeguard measures shall not be applied or maintained after the transition period. Upon request of a Party, the Joint Committee shall evaluate whether to continue for certain goods the bilateral safeguard measure mechanism included in this Chapter. For greater certainty, such request by a Party to the Joint Committee should be made prior to the termination of the transition period.

6. No Party shall apply or maintain a bilateral safeguard measure under this section for any product imported under a tariff rate quota (TRQ) established by the Parties under this Agreement.

Article 5.4: Investigation Procedures

1. A Party shall apply a bilateral safeguard measure only following an investigation, by the Party's competent authority in accordance with its internal legislation and Articles 3 and 4.2(c) of the WTO Agreement on Safeguards (hereinafter "the Safeguards Agreement"); and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Articles 4.2 (a) and 4.2 (b), of the Safeguards Agreement; and to this end, Articles 4.2(a) and 4.2 (b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 5.5 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 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 such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2. The Party intending to take provisional bilateral safeguard measures shall immediately notify the other Party and provide a notification containing all pertinent information, which shall include preliminary evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved and the proposed measure, as well as the proposed date of introduction and its expected duration. A Party shall not apply a provisional bilateral safeguard measure until at least 45 days after the date its competent authorities initiate an investigation. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Article 5.4 (Investigation Procedures).

Article 5.6: Notification and Consultations

1. A Party shall promptly notify the other Party, in writing upon:
 - (a) initiating a bilateral safeguard proceeding under this Chapter;
 - (b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 5.2 (Application of a Bilateral Safeguard Measure); and
 - (c) taking a decision to apply or extend provisional or final bilateral safeguard measures.
2. A Party shall provide to the other Party a copy of the public version of the investigation reports under Article 5.4.1 of its competent investigating authority.
3. If a Party whose good is subject to a bilateral safeguard proceeding under this Chapter requests within 10 days from receipt of a notification as specified in paragraph 1(b) to hold consultations, the Party conducting that proceeding shall enter into consultations with the requesting Party with a view to finding an appropriate and mutually acceptable solution. If the Parties fail to find a mutually acceptable solution within 30 days of the notification being made, the Party may apply the measures.

Article 5.7: Compensation

1. No later than 30 days after it applies a safeguard measure, a Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The applying Party shall provide such compensation as the Parties mutually agree.
2. If the Parties are unable to agree on compensation through consultation under paragraph 1 within 30 days after consultations begin, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.
3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.
4. The obligation to provide compensation under paragraph 1 and right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.
5. Any compensation shall be based upon the total period of application of the provisional safeguard measure and of the safeguard measure.

Section B: Global Safeguard Measures

Article 5.8: Imposition of Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.
2. A Party may not apply, with respect to the same good, at the same time:
 - (a) a bilateral safeguard measure; and
 - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.
3. For imports of goods originating from the territory of a Party to the territory of the other Party that are not a cause of serious injury or threat thereof to the domestic industry producing like or directly competing goods of the importing Party, the safeguard measures with respect to imports of such goods do not apply.
4. When determining whether the imports from the other Party is a cause of serious injury or threat thereof, the competent investigating authority of the importing Party may consider such factors as the import shares and the amount of imports of the other Party, and the changes thereof, among others.
5. The following conditions and limitations shall apply to a proceeding that may result in global safeguard measures under this Article:
 - (a) the Party initiating such a proceeding shall, without delay, deliver to the other Party written notice thereof, including all pertinent information leading to the initiation of the global safeguard investigation and offer the possibility for consultations to the other Party;
 - (b) where, as a result of a measure, the rate of a customs duty is increased, the margin of preference under this Agreement shall be maintained;
 - (c) upon the termination of the measure, the rate of a customs duty shall be the preferential rate which would have been in effect had the measure not been imposed. If a tariff quota was applied as a global safeguard measure, it will be eliminated upon termination of the global safeguard measure.

Section C: Anti-dumping and Countervailing Measures

Article 5.9: Anti-dumping and Countervailing Measures

1. Both Parties agree that anti-dumping and countervailing measures should be used in full compliance with Article VI of GATT 1994, WTO Agreement on Implementation of Article VI of GATT 1994 and WTO Agreement on Subsidies and Countervailing Measures.
2. The Parties shall ensure full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply anti-dumping and countervailing measures. Disclosures shall be made in writing and allow interested parties sufficient time to respond with comments. After final disclosure interested parties shall be given at least seven days to make these comments.
3. The competent investigating authority shall, upon receiving a properly documented application by or on behalf of its domestic industry for the initiation of the investigation in respect of a good from the other Party, and before proceeding to initiate such an anti-dumping investigation, notify the other Party at least 10 working days in advance of the date of initiation of such investigation.
4. If, in an anti-dumping or countervailing duty investigation that involves imports from the other Party, the investigating authority determines that a timely response to a request for information does not comply with its request:
 - (a) the investigating authority shall inform the interested party that submitted the response of the nature of the deficiency and, to the extent practicable in light of time limits established to complete the anti-dumping or countervailing duty action, provide that interested party with an opportunity to remedy or explain the deficiency.
 - (b) if that interested Party submits further information in response to that deficiency and the investigating authority finds that the response is not satisfactory, or that the response is not submitted within the applicable time limits, and if the investigating authority disregards all or part of the original and subsequent responses, the investigating authority shall explain in the determination or other written document the reason for disregarding the information.
5. All interested parties shall be granted the right to be heard in order to express their views during anti-dumping and anti-subsidy investigations.
6. In an anti-dumping or countervailing duty investigation, prior to the imposition of a provisional measure and prior to the definitive determination, the exporting Party may request consultations with a view of seeking a solution acceptable to the Parties. The importing Party shall enter into consultations with the requesting Party. Such consultations shall not delay or impede the investigation and its subsequent proceedings by the Party in accordance with the relevant WTO Agreements.
7. An anti-dumping or countervailing duty imposed by a Party shall not exceed the margin of dumping or countervailable subsidy, and the Party shall endeavour to ensure that

the amount of this duty is less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

8. Anti-dumping or countervailing measures may not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. In determining the public interest, the Party shall take into account, *inter alia*, the interests of the domestic industry, importers, representative users and representative consumers based on the relevant information provided to the investigating authorities.

9. The Party whose good is subject to an anti-dumping or countervailing measure imposed by the other Party has the right to request consultations. Upon request, the other Party shall enter into consultation with the requesting Party.

Section D: General Provision

Article 5.10: Selection of Measures

In each section, the Parties, in selecting measures relating to that section, shall give priority to those measures which cause less economic impact on bilateral trade.