

## CHAPTER 5

### TRADE REMEDIES

#### SECTION A

#### Anti-Dumping and Countervailing Duties

##### Article 5.1

##### General Provisions

1. Each Party retains its rights and obligations arising from the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and from the WTO Agreement on Subsidies and Countervailing Measures.
2. For the purpose of this Section, the preferential rules of origin under Chapter 3 of this agreement shall not apply.

##### Article 5.2

##### Transparency

1. Both Parties agree that anti-dumping and anti-subsidy investigations should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.
2. Both Parties shall ensure, as soon as practicable, after any imposition of provisional measures and in any case before final determination is made, full disclosure of all essential facts and considerations, which form the basis for the decision to apply measures. This is without prejudice to Article 6.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.4 of the WTO Agreement on Subsidies and Countervailing Measures. 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 anti-dumping and anti-subsidy investigations.

### Article 5.3

#### Consideration of Public Interest

Parties shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organizations to the extent they have provided relevant information to the investigating authorities within the relevant timeframe. Parties may decide not to apply anti-dumping or countervailing measures based on this information.

### Article 5.4

#### Lesser Duty Rule

Should a Party decide to impose an anti-dumping duty, the amount of such duty shall, not exceed the margin of dumping, but, whenever possible, it should be less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

### Article 5.5

#### Exclusion from bilateral dispute settlement mechanism

The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement.

## SECTION B

### Global Safeguard Measures

#### Article 5.6

##### General provisions

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.

#### Article 5.7

##### Transparency and imposition of definitive measures

1. Notwithstanding Article X.1, at the request of the other Party and provided the latter has a substantial interest, the Party initiating a safeguard investigation or intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information leading to the initiation of a safeguard investigation, or the imposition of global safeguard measures including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the WTO Agreement on Safeguards.

2. When imposing definitive safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade, provided that the Party affected by the measures has a substantial interest.

3. For the purpose of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive safeguard measures are met, and that it intends to apply such measures, that Party shall notify the other Party and give the possibility to hold bi-lateral consultations, provided that the other Party has a substantial interest. If no satisfactory solution has been reached within 15 days of the notification, the importing Party may adopt the appropriate measures to remedy the problem.

4. For the purposes of this Article, a Party shall be considered as to have a substantial interest when it is among the five largest suppliers of the imported product during the most recent three year period of time, measured in terms of either absolute volume or value.

#### Article 5.8

##### Exclusion from bilateral dispute settlement mechanism

The provisions of this Section referring to WTO rights and obligations shall not be subject to the Dispute Settlement provisions of this Agreement

## SECTION C

### Bilateral Safeguard Measures

#### SUB-SECTION C.1

##### General Provisions

###### Article 5.9

###### Definitions

For the purposes of this section:

1. “Transition period” means seven years from the date of entry into force of this Agreement. For any product for which the Schedule in Annex I (Elimination of Customs Duties) of the Party applying the measure provides for tariff elimination of seven years, transition period means the tariff elimination period for that product set out in that Schedule respectively plus two years.

2. “Domestic industry” means, with respect to an imported product, the producers as a whole of the like or directly competitive products operating within the territory of a Party, or those producers whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

###### Article 5.10

###### Application of a bilateral safeguard measure

1. Notwithstanding Section B (Global Safeguard Measures), if as a result of the reduction or elimination of a customs duty under this Agreement, a product 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 domestic producers of like or directly competitive products, the importing Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Section.

2. If the conditions in paragraph 1 are met, the safeguard measures of the importing Party may only consist of one of the following:

- (a) suspension of the further reduction of the rate of customs duty on the product concerned provided for under this Agreement; or

- (b) increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
  - (i) the most-favoured nation applied rate of customs duty on the product in effect at the time the measure is taken; or
  - (ii) the most-favoured nation applied rate of customs duty on the product in effect on the day immediately preceding the date of entry into force of this Agreement.

## Article 5.11

### Conditions and Limitations

#### 1. A bilateral safeguard measure may not be applied:

- (a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury or threat thereof;
- (b) for a period exceeding two years. The period may be extended by another two years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Section, that the measure continues to be necessary to prevent or remedy serious injury or threat thereof, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or
- (c) beyond the expiration of the transition period.

2. 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 product, according to the Schedule of that Party.

3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

## Article 5.12

### Provisional 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 requirements of Article 5.21, paragraph 1 of this Chapter, pursuant to a preliminary determination that there is clear evidence that imports of a product originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause serious injury.

2. The duration of any provisional measure shall not exceed two hundred days, during which time the Party shall comply with the relevant procedural rules laid down in Sub-Section C.2 (Procedural Rules Applicable to Bilateral Safeguard Measures). The Party shall promptly refund any tariff increases if the investigation described in Sub-Section C.2 does not result in a finding that the requirements of Article 5.10 are met. The duration of any provisional measure shall be counted as part of the period described in Article 5.11, paragraph 1 (b). The importing Party concerned shall inform the other Party concerned upon taking such provisional measures and it shall immediately refer the matter to the Association Committee for examination if the other Party so requests.

#### Article 5.13

##### Compensation and suspension of concessions

1. A Party applying a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect. The Party shall provide an opportunity for such consultations no later than thirty 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 thirty days, the Party whose products are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure

3. A 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 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 shall not be exercised for the first two years, provided that the safeguard measure has been taken as a result of an absolute increase in imports, and terminates on the termination of the bilateral safeguard measure.

#### Article 5.14

##### Time lapse in between two measures

1. No safeguard measure referred to in this Section shall be applied to the import of a product that has previously been subject to such a measure, unless a period of time equal to half of that during which the safeguard measure was applied for the immediately preceding period has elapsed. A measure applied for more than once on the same product, may not be extended as indicated in par.1 (b) in Article 5.11 (Conditions and Limitations).

2. Neither Party shall apply, with respect to the same product and during the same period:

- a) A bilateral safeguard measure or a provisional safeguard measure provided in this Agreement; and
- b) A safeguard measure under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

#### Article 5.15

##### Outermost regions<sup>1</sup> of the European Union

1. Where any product originating in Chile is being imported into the territory of one or several outermost regions of the EU in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region(s) concerned of the EU Party, the EU Party, after having examined alternative solutions, may exceptionally take bilateral safeguard measures limited to the territory of the region(s) concerned.
2. For the purpose of paragraph 1, serious deterioration shall mean major difficulties in a sector of the economy producing like or directly competitive products. The determination of 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 domestic production and to imports from other sources; and
  - (b) the effect of such imports on the situation of the relevant industry or the economic sector concerned, including inter alia on the levels of sales, production, financial situation and employment.
3. Without prejudice to the provisions of paragraph 1, other rules laid down in Section C applicable to bilateral safeguards are also applicable to any safeguard adopted under this Article. Any reference to “serious injury” in those other rules shall be understood as “serious deterioration” for the purposes of this Article.

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<sup>1</sup> At the entry into force of this Agreement, the outermost regions of the EU 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 Treaty on the Functioning of the EU from the date of adoption of that decision. In the event that an outermost region of the EU changes its status as such by the same procedure, this Article shall cease to be applicable from the European Council's decision accordingly. The EU shall notify the other Parties of any change in the territories considered as outermost regions of the EU.

## SUB-SECTION C.2

### Procedural Rules Applicable to Bilateral Safeguard Measures

#### Article 5.16

##### Applicable Law

For the application of bilateral safeguard measures, the competent investigating authority shall comply with the provisions of this Sub-Section and in cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under its domestic legislation.

#### Article 5.17

##### Initiation of a proceeding

1. A safeguard proceeding may be initiated by the competent investigating authority on its own initiative in exceptional circumstances, or upon a written application made by or on behalf of the domestic industry. In the case of the European Union that application can be filed by one or more Member States of the European Union on behalf of the domestic industry. The application shall be considered to have been made “by or on behalf of the domestic industry” if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like or directly competitive products produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total national production of the like or directly competitive goods produced by the domestic industry.
2. Once the investigation has been initiated, the written application shall be made available for interested parties, except for the confidential information contained therein.
3. Upon initiation of a safeguard proceeding, the competent investigating authority shall publish a notice of initiation of the proceeding in the official journal of the Party. The notice shall identify the entity which filed the written application, if applicable, the imported product that is the subject of the proceeding and its subheading and the tariff item number under which it is classified, the type of proposed measure to be taken, information regarding the public hearing or the period within which interested parties may apply to be heard orally by the investigating authority, the period within which interested parties may make known their views in writing and submit information, the place at which the written application and any other non-confidential documents filed in the course of the proceeding may be inspected



and the name, address and telephone number of the office to be contacted for more information.

4. With respect to a safeguard proceeding initiated on the basis of a written application the competent investigating authority shall not publish the notice required by paragraph 3 without first assessing carefully that the written application meets the requirements of its domestic legislation and includes reasonable evidence that imports of a product originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the alleged serious injury.

## Article 5.18

### Investigation

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

3. When a Party makes a notification pursuant to paragraph 1 that it is applying or extending a bilateral safeguard measure, that Party shall include in that notification:

(a) evidence of 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.; The investigation shall demonstrate, on the basis of objective evidence, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof. Known factors other than the increased imports shall also be examined to ensure that the serious injury or the threat of serious injury caused by these other factors is not attributed to the increased imports.

(b) a precise description of the originating good subject to the bilateral safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 2-D (Tariff Commitments) are based;

(c) a precise description of the bilateral safeguard measure;

(d) the date of the bilateral 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 bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of a Party whose good is subject to a bilateral safeguard proceeding under this Chapter, the Party that conducts that proceeding 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 the proceeding.

5. Each Party shall ensure that its competent investigating authority completes any such investigation within twelve months of its date of initiation.

#### Article 5.19

##### Confidential information

Any information which is by nature confidential or which is provided on a confidential basis shall, upon good cause being shown, be treated as such by the competent investigating authority. Such information shall not be disclosed without permission of the Party submitting it. Parties providing confidential information are 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. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. However, if the competent 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 authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

#### Article 5.20

##### Hearings

In the course of each proceeding, the competent investigating authority shall:

- (a) hold a public hearing, after providing reasonable notice, to allow all interested parties and any representative consumer association, to appear in person or by counsel, to present evidence and to be heard on serious injury or threat of serious injury, and the appropriate remedy; or
- (b) provide an opportunity to all interested parties to be heard where they have made a written application within the period laid down in the notice of initiation showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

Article 5.21  
Notifications and publications

1. Where a Party takes the view that one of the circumstances set out in Article 5.10 or 5.17 exists, it shall immediately refer the matter to the Trade Committee for examination. The Trade Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within thirty days of the matter being referred to the Trade Committee, the importing Party may adopt the appropriate measures to remedy the circumstances in accordance with this Section.
2. For the purposes of paragraph 1, the competent investigating authority shall provide the exporting Party with all pertinent information, which shall include evidence of serious injury or threat thereof to domestic producers of the like and directly competitive product, caused by increased imports, precise description of the product involved and the proposed measures, proposed date of imposition and expected duration.
3. The competent investigating authority shall also publish its findings and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of the European Union/the official gazette of Chile, including the description of the imported product and the situation, which has given rise to the imposition of measures in accordance with Article 5.10 or 5.17, the causal link between such situation and the increased imports, and the form, level and duration of the measures.

Article 5.22  
Use of the English language

In order to ensure the maximum efficiency for the application of the trade remedies rules under this Section, the investigating authorities of the Parties shall allow for longer deadlines to submit translations of documents that have been provided in English within the relevant deadlines.