ARTICLE 5.3

Conditions and limitations

1. No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry, provided that such period of time does not exceed a period of two years. However, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, does not exceed four years.

2. Bilateral safeguard measures may only be applied during the transition period.

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

4. No bilateral safeguard measure shall be applied to the import of a particular originating good which has already 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, whichever is longer.

5. Upon the termination of a bilateral safeguard measure, the rate of customs duty for the originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

ARTICLE 5.4

Investigation

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by its competent authority[1] in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards.

2. The investigation shall in all cases be completed within one year following its date of initiation.

3. In the investigation to determine whether the increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry, the competent authority which carries out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry. Those factors include, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between the increased imports of the originating good and the serious injury or threat of serious injury to the domestic industry. In this determination, factors other than the increased imports of the originating good which are also causing injury to the domestic industry at the same time shall be taken into consideration.

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[1] For the purposes of this Section, for Japan, competent authority includes its relevant authorities.