

CHAPTER 7
TRADE REMEDIES

Section A: Safeguard Measures

ARTICLE 7.1: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of 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 constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may¹:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the MFN applied rate of duty on the good in effect at the time the measure is applied; and
 - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

ARTICLE 7.2: CONDITIONS AND LIMITATIONS

1. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 2 and shall consult with the other Party within 30 days after the initiation of the investigation, with a view to, among others, reviewing the information arising from the investigation and exchanging views on the measure. Consultations may be held in person or by any other communication means which adequately suffices the purpose of consultations.

2. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authority in accordance with Articles 3 and 4.2(c) of the *Agreement on Implementation of Article VI of the GATT 1994, contained in Annex IA to the WTO Agreement*; (hereinafter referred to as 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*.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Articles 4.2(a) and 4.2(b) of the Safeguards Agreement, and to this end,

¹ For greater certainty, only one bilateral safeguard measure may be imposed at a time.

Articles 4.2(a) and 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

4. A bilateral safeguard investigation may be initiated by the competent authority on its own initiative or upon a written application pursuant to the legislation of each Party.

5. Each Party shall ensure that its competent authority complete any such investigation within one year of its date of initiation.

6. Neither Party may apply 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;
- (b) for a period exceeding two years, except that the period may be extended by up to two years if the competent authority of the importing Party determine, in conformity with the procedures specified in this Article, 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 four years; or
- (c) beyond the expiration of the transition period, except with the consent of the other Party.

7. A Party shall not apply a bilateral safeguard measure again on the same good until a period of time equal to the duration of the previous bilateral safeguard measure, including any extension, has elapsed commencing from the termination of the previous bilateral safeguard measure, provided that the period of non-application is at least two years.

8. Where the expected duration of the bilateral safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.

9. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule included in Annex 2-B (Elimination of Customs Duties), would have been in effect but for the measure.

ARTICLE 7.3: 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 pursuant to a preliminary determination by its competent authority 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. Before a Party's competent authority may make a preliminary determination, the Party shall publish a public notice in its official journal setting forth how interested parties, including importers and exporters, may obtain a non-confidential copy of the application requesting a provisional bilateral safeguard measure, and shall provide interested parties at least 20 days after the date it publishes the notice to submit evidence and views regarding the application of a provisional measure. A Party may not apply a provisional measure until at least 45 days after the date its competent authority initiates an investigation.

3. The applying Party shall notify the other Party before applying a bilateral safeguard measure on a provisional basis and shall initiate consultations after applying the measure. Consultations may be held in person or by any other communication means which adequately suffices the purpose of consultations.

4. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 7.2.2 and 7.2.3. The duration of any provisional measure shall be counted as part of the period described in Article 7.2.6(b).

5. The Party shall promptly refund any tariff increases if the investigation described in Article 7.2.2 does not result in a finding that the requirements of Article 7.1 are met.

ARTICLE 7.4: COMPENSATION

1. No later than 30 days after a Party applies a bilateral safeguard measure, the Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalizing 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. Consultations may be held in person or by any other communication means which adequately suffices the purpose of consultations.

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. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions under paragraph 2 shall terminate on the date the bilateral safeguard measure terminates.

4. Any compensation shall be based on the total period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

ARTICLE 7.5: PROCEDURAL RULES

For the application of bilateral safeguard measures, the competent authority shall comply with the provisions of this Section and in cases not covered by this Section, the competent authority may apply domestic procedural rules which are consistent with the Safeguards Agreement.

ARTICLE 7.6: GLOBAL SAFEGUARD MEASURES

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. Unless otherwise provided in this Article, this Agreement does not confer any additional rights or obligations on the Parties with regard to measures taken under Article XIX of GATT 1994 and the Safeguards Agreement.

2. At the request of the other Party, the Party intending to take safeguard measures shall provide immediately *ad hoc* written notification of all pertinent information on the initiation of a safeguard investigation, the provisional findings and the final findings of the investigation.

3. Neither Party may apply, with respect to the same good, at the same time:

- (a) a bilateral safeguard measure in accordance with Article 7.1; and
- (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

4. Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Section.

Section B: Anti-Dumping and Countervailing Duties

ARTICLE 7.7: GENERAL PROVISIONS

1. Except as otherwise provided for in this Chapter, the Parties retain their rights and obligations under Article VI of GATT 1994, the AD Agreement and the SCM Agreement.

2. The Parties agree that anti-dumping and countervailing duties should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system as regards proceedings affecting originating goods from the other Party. For these purposes, the Parties shall ensure, after any imposition of provisional measures and in any case before the final determination, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply definitive measures, without prejudice to Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing, and allow interested parties sufficient time to make their comments.

3. Provided that it does not unnecessarily delay the conduct of the investigation, interested parties shall be granted the opportunity to be heard in order to express their views during the anti-dumping or countervailing duty investigations.

ARTICLE 7.8: NOTIFICATION AND CONSULTATION

1. After receipt by a Party's competent authority of a properly documented anti-dumping application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification, at the earliest possible opportunity, to the other Party of its receipt of the application and afford the other Party consultations or other similar opportunities regarding the application, consistent with the laws of the Party. Consultations may be held in person or by any other communication means which adequately suffices the purpose of the consultations.

2. After receipt by a Party's competent authority of a properly documented countervailing duty application 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 and afford the other Party a meeting to consult with its competent authority regarding the application. Consultations may be held in person or by any other communication means which adequately suffices the purpose of the consultations.

ARTICLE 7.9: UNDERTAKINGS²

1. Where a Party's competent authority has made a preliminary affirmative determination of dumping and injury caused by such dumping, the Party shall afford due consideration and adequate opportunity for consultations to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of anti-dumping duties, through the means provided for in the laws and procedures of the Party.

2. Where a Party's competent authority has made a preliminary affirmative determination of subsidization and injury caused by such subsidization, the Party shall afford due consideration, and adequate opportunity for consultations, to the other Party and exporters of the other Party, regarding proposed undertakings on price or, as appropriate, on quantity, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the laws and procedures of the Party.

ARTICLE 7.10: LESSER DUTY RULE

Should a Party decide to impose an anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, and it is

² For greater certainty, this Article should be interpreted consistently with Article 8 (Price Undertakings) of the AD Agreement and Article 18 (Undertakings) of the SCM Agreement.

desirable that it should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 7.11: CONSIDERATION OF PUBLIC INTERESTS

The Parties shall endeavor to consider the public interests before imposing an anti-dumping or countervailing duty.

ARTICLE 7.12: HEARING

Upon request of the interested parties, the Parties shall consider whether to hold a hearing in order to grant the opportunity of expressing their views during anti-dumping or countervailing measures investigations. This shall not unnecessarily delay the conduct of the investigations.

ARTICLE 7.13: INVESTIGATION AFTER TERMINATION RESULTING FROM A REVIEW

The Parties agree to examine carefully any application for initiation of an anti-dumping investigation on an originating good from the other Party and on which anti-dumping measures have been terminated in the previous 12 months as a result of a review.

ARTICLE 7.14: DISPUTE SETTLEMENT

Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Section.

Section C: Definitions

ARTICLE 7.15: DEFINITIONS

For the purposes of this Chapter:

bilateral safeguard measure means a measure described in Article 7.1;

competent authority means:

- (a) for Korea, the Korea Trade Commission or, the Ministry of Strategy and Finance;
- (b) for Costa Rica, the Trade Remedies Directorate (*Dirección de Defensa Comercial*) of the Ministry on Economy, Industry and Commerce (*Ministerio de Economía, Industria y Comercio*);

- (c) for El Salvador, the Trade Agreements Administration Bureau (*Dirección de Administración de Tratados Comerciales*) of the Ministry of Economy (*Ministerio de Economía*);
- (d) for Honduras, the Directorate General of Administration and Negotiation of Agreements (*Dirección General de Administración y Negociación de Tratados*) of the Secretary of State in the Office of Economic Development (*Secretaría de Estado en el Despacho de Desarrollo Económico*);
- (e) for Nicaragua, the Directorate of Application and Negotiation of Trade Agreements (*Dirección de Aplicación y Negociación de Acuerdos Comerciales*) of the Ministry of Development, Industry and Commerce (*Ministerio de Fomento, Industria y Comercio*); and
- (f) for Panama, the National Directorate for International Trade Agreement Administration and Commercial Defense (*Dirección Nacional de Administración de Tratados Comerciales Internacionales y Defensa Comercial*) of the Ministry of Commerce and Industries (*Ministerio de Comercio e Industrias*),

or their successors;

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party, or those whose collective output of the like or directly good constitutes a major proportion of the total domestic production of that good;

global safeguard measure means a measure applied under Article XIX of GATT 1994 and the Safeguards Agreement;

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

substantial cause means a cause that is important and not less than any other cause;

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

transition period means the 10-year period following the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 2-B (Elimination of Customs Duties) of the Party applying the safeguard measure, provides for the elimination of its tariffs on the good over a period of 10 or more years, transition period means the tariff elimination period for the good set out in that schedule plus three years.