

CHAPTER SEVEN TRADE REMEDIES

SECTION A: SAFEGUARD MEASURES

ARTICLE 7.1: APPLICATION OF A SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

- (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) MFN applied rate of duty on the good in effect at the time the measure is applied; and
 - (ii) the base rate as specified in the Schedule to Annex 2-A (Elimination of Customs Duties).

ARTICLE 7.2: STANDARDS FOR A SAFEGUARD MEASURE

1. A Party shall notify immediately the other Party in writing upon 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 reviewing the information arising from the investigation and exchanging views on the measure.

2. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2 of the Safeguards Agreement, and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.

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

4. Neither Party shall apply a 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 one year if the competent authorities 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 three years; or
 - (c) beyond the expiration of the transition period.
- 5. Neither Party shall apply a safeguard measure more than once against the same good.
- 6. Where the expected duration of the safeguard measure is over one year, the Party applying a measure shall progressively liberalize it at regular intervals during the period of application.
- 7. When a Party terminates a safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex 2-A (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 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. Before a Party's competent authorities 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 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 shall not apply a provisional measure until at least 45 days after the date its competent authorities initiate an investigation.
- 3. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Article 7.2.2.
- 4. The Party shall promptly refund any tariff increase if the investigation described in Article 7.2.2 does not result in a finding that the requirements of Article 7.1 are met. The duration of any provisional measure shall be counted as part of the period described in Article 7.2.4(b).

ARTICLE 7.4: COMPENSATION

1. No later than 30 days after it applies a bilateral safeguard measure, a 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.

2. If the Parties are unable to agree on compensation within 30 days after consultations begin, the Party against whose originating good the bilateral safeguard measure is applied may suspend the application of substantially equivalent concessions with respect to originating goods of the Party applying the safeguard measure.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first two years during which a bilateral safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such measure conforms to this Agreement.

ARTICLE 7.5: GLOBAL SAFEGUARD MEASURES

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to measures taken under Article XIX of the GATT 1994 and the Safeguards Agreement, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if such imports are not a substantial cause of serious injury or threat thereof.

2. Neither Party shall apply, with respect to the same good, at the same time:

(a) a safeguard measure; and

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

3. The provisions of this Article shall not be subject to Chapter 20 (Dispute Settlement), except for paragraph 2.

ARTICLE 7.6: DEFINITIONS

For purposes of Section A:

competent authority means

(a) for Korea, the *Korea Trade Commission*, or its successor; and

(b) for Colombia, the *Ministry of Trade, Industry and Tourism (Ministerio de Comercio, Industria y Turismo)*, or its successor;

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 competitive good constitutes a major proportion of the total domestic production of that good;

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

safeguard measure means a measure described in Article 7.1;

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 ten-year period following the date this Agreement enters into force, except that for any good for which the Schedule to Annex 2-A (Elimination of Customs Duties) of the Party applying the safeguard measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, **transition period** means the tariff elimination period for the good set out in that Schedule.

SECTION B: ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 7.7: ANTI-DUMPING AND COUNTERVAILING MEASURES

1. Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under Article VI of the GATT 1994, the AD Agreement, and the SCM Agreement, with regard to the application of anti-dumping and countervailing measures.

2. The Parties shall endeavor to observe the following practices in anti-dumping or countervailing cases between them in order to enhance transparency in the implementation of the WTO Agreement:

- (a) when anti-dumping margins are established, assessed, or reviewed under Articles 2, 9.3, 9.5, and 11 of the AD Agreement regardless of the comparison bases under Article 2.4.2 of the AD Agreement, all individual margins, whether positive or negative, should be counted toward the average; and
- (b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the AD Agreement, the Party taking such a decision should apply the 'lesser duty' rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 7.8: NOTIFICATION AND CONSULTATIONS

1. (a) Upon receipt by a Party's competent authorities 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 to the other Party of its receipt of the application and afford the other Party a meeting or other similar opportunities regarding the application, consistent with the laws of the Party. Such a meeting or similar opportunities shall not interfere with a Party's procedures towards the initiation of an anti-dumping investigation.
- (b) Where a Party's authorities have 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. (a) Upon receipt by a Party's competent authorities 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 authorities regarding the application.
- (b) Where a Party's authorities have 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 price undertakings, 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 7.9: DISPUTE SETTLEMENT

The provisions of this Section shall not be subject to Chapter 20 (Dispute Settlement), except for Article 7.7.2 and Article 7.8.