

## **CHAPTER SEVEN 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 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) the most-favored-nation (hereinafter referred to as “MFN”) applied rate of duty on the good in effect at the time the action is taken; 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 of 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 bilateral safeguard measure only following an investigation by the Party’s competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a 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, Articles 4.2(a) and 4.2(b) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.

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

5. Neither Party shall 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 three 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 bilateral 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.

6. Neither Party shall apply a bilateral safeguard measure more than once against the same good for a period of time equal to the duration of the previous bilateral safeguard measure.

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

8. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex 2-B (Reduction or 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 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 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.

3. 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.

4. 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. The duration of any provisional measure shall be counted as part of the period described in Article 7.2.5(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 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 bilateral safeguard measure.

3. The right to suspend the application of concessions in accordance with paragraph 2 shall not be exercised for the first two years during which the bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and that it conforms to this Agreement.

4. 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.

5. 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: 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 actions taken under Article XIX of 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. 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 preliminary determination and the final determination of the investigation.

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

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

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

### **Section B: Anti-Dumping and Countervailing Duties**

#### **Article 7.6: General Provisions**

1. Except as otherwise provided for in this Chapter, the Parties maintain 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 goods originating in the other Party. For this purpose, the Parties shall ensure, immediately 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 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 7.7: Notification and Consultation**

1. After 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, consistent with the Party's law.

2. After 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 afford the other Party a meeting to consult with its competent authorities regarding the application, consistent with the Party's law.

#### **Article 7.8: Undertakings<sup>1</sup>**

1. After a Party's competent authorities initiate an antidumping or countervailing duty investigation, the Party shall transmit to the other Party's embassy or competent authorities written information regarding the Party's procedures for requesting its authorities to consider an undertaking on price including the time frames for offering and concluding any such undertaking.

2. In an antidumping investigation, where a Party's authorities have made a preliminary affirmative determination of dumping and injury caused by such

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<sup>1</sup> 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.

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 antidumping duties, through the means provided for in the Party's domestic laws and procedures.

3. In a countervailing duty investigation, 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 Party's laws and procedures.

#### **Article 7.9: Cumulative Assessment**

When imports from more than one country are simultaneously subject to anti-dumping or countervailing duty investigation, a Party shall examine, with special care, whether the cumulative assessment of the effect of the imports of the other Party is appropriate in light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.

#### **Article 7.10: Consideration of Public Interests**

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

#### **Article 7.11: Public Hearing**

Each Party, in accordance with law, shall take due consideration in holding a public hearing, either upon receipt of written application from interested parties or on its own initiative.

#### **Article 7.12: Dispute Settlement**

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

## **Section C: Committee on Trade Remedies**

### **Article 7.13: Committee on Trade Remedies**

1. The Parties hereby establish a Committee on Trade Remedies (hereinafter referred to as the “Committee”) to oversee implementation of this Chapter and to discuss matters that the Parties agree. The Committee comprises representatives at an appropriate level from relevant agencies responsible for trade remedy measures of each Party.
2. The Parties may cooperate as applicable to promote a better understanding of their respective laws, their application and, in general, any aspect of trade policy regarding trade remedy matters by sharing information and experiences through the Committee.
3. The Committee shall meet on the time and place which the Parties mutually agree.

## **Section D: Definitions**

### **Article 7.14: Definitions**

For purposes of Section A:

**bilateral safeguard measure** means a measure described in Article 7.1;

**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;

**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 years period following the date of entry into force of this Agreement, except that for any good for which the Schedule set out in Annex 2-B (Reduction or Elimination of Customs Duties) of the Party applying the bilateral safeguard measure provides for the Party to eliminate its customs duties on the good over a period of 10 years or more, **transition period** means the customs duty elimination period for the good set out in that Schedule plus five years.