

CHAPTER 7 TRADE REMEDIES

Section A: Safeguard Measures

Article 7.1 : Definitions

For the purposes of this Section:

bilateral safeguard measure means a measure described in Article 7.2;

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;

provisional bilateral safeguard measure means a measure described in Article 7.4;

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

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, in relation to a particular good, the period from the date of entry into force of this Agreement until five years after the date of the elimination or the completion of the reduction period of the customs duties in accordance with that Party's Schedule of tariff commitments in Annex 2-A (Tariff Schedule).

Article 7.2 : 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 as to cause or threaten to cause serious injury 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;
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:

- (i) the most-favoured-nation (hereinafter referred to as “MFN”) applied rate of duty on the good in effect at the time the bilateral safeguard measure is applied; or
- (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; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of duty to a level that, for each season, does not exceed the lesser of:
 - (i) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of application of the bilateral safeguard measure; or
 - (ii) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of entry into force of this Agreement.

Article 7.3 : Conditions and Limitations

1. A Party shall apply a bilateral safeguard measure only following an investigation by the Party’s competent authorities in accordance with the procedures and requirements provided for in 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 part of this Agreement, *mutatis mutandis*.

2. A Party shall notify the other Party in writing upon initiation of an investigation described in paragraph 1 and shall consult with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.

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 or maintain 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 one year if the competent authorities of the applying Party determine, in conformity with the procedures specified in this Article, that the bilateral safeguard 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 three years; or

- (c) beyond the expiration of the transition period, except with the consent of the other Party.

5. Neither Party shall apply a bilateral safeguard measure more than once against the same good.

6. No bilateral safeguard measure or provisional bilateral safeguard measure shall be applied against a particular good while a global safeguard measure under Article XIX of GATT 1994 and the Safeguard Agreement in respect of that good is in place. In the event that a global safeguard measure is taken in respect of a particular good, any existing bilateral safeguard measure or provisional bilateral safeguard measure which is taken against that good in accordance with this Section shall be terminated.

7. Where the expected duration of a bilateral safeguard measure is over one year, the applying Party shall progressively liberalise 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-A (Tariff Schedule), would have been in effect but for the bilateral safeguard measure.

Article 7.4 : Provisional Bilateral Safeguard Measure

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a provisional bilateral safeguard measure in accordance with 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 cause or threaten to cause serious injury to its domestic industry.

2. Before applying a provisional bilateral safeguard measure, the applying Party shall notify the other Party and shall immediately initiate consultations after applying the provisional bilateral safeguard measure.

3. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the applying Party shall comply with the requirements of Article 7.3.1.

4. The applying Party shall promptly refund any additional customs duties collected as a result of a provisional bilateral safeguard measure if the investigation conducted in accordance with Article 7.3.1 does not result in a finding that the requirements of Article 7.2 have been met. The duration of any provisional measure shall be counted as part of the period described in Article 7.3.4(b).

Article 7.5 : 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 liberalising 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 bilateral safeguard 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 in accordance with paragraph 1, the Party against whose originating good the bilateral safeguard 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 applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions in accordance with paragraph 2 shall terminate on the date the bilateral safeguard measure terminates.

Article 7.6 : Global Safeguard Measures

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement and the Agreement on Agriculture. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with respect to measures applied under Article XIX of GATT 1994 and the Safeguards Agreement or the Agreement on Agriculture, except that a Party applying such a measure under Article XIX of GATT 1994 and the Safeguards Agreement may exclude imports of an originating good of the other Party from the measure if such imports are not a cause of serious injury or threat thereof.

Section B: Anti-Dumping and Countervailing Measures

Article 7.7 : Anti-Dumping and Countervailing Measures

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing measures. Except as otherwise provided in this Chapter, nothing in this Agreement shall be construed to confer any additional rights or impose any additional obligations on a Party with respect to anti-dumping or countervailing measures.
2. In order to enhance transparency in the implementation of the WTO Agreement:
 - (a) the Parties confirm their current practice of counting toward the average, all individual margins, whether positive or negative, when anti-dumping margins are established on the weighted average-to-weighted average basis or

transaction-to-transaction basis, or weighted average-to-transaction basis, and share their expectation that such practice will continue;¹ and

- (b) the Party making such a decision to impose any anti-dumping duties pursuant to Article 9.1 of the Anti-Dumping Agreement, shall normally 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. After receipt by a Party’s competent authorities of a properly documented anti-dumping application relating to imports from the other Party and before proceeding to initiate an investigation, the Party shall give written notice, at the earliest possible opportunity, to the other Party, and immediately after initiating an investigation shall afford the other Party an adequate opportunity to make inquiries and representations regarding the application.

2. As soon as possible after an application for countervailing measures is accepted by the competent authorities of a Party, and in any event before the initiation of an investigation, and if products of the other Party may be subject to such investigation, the other Party shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

Article 7.9 : Undertakings

1. After a Party’s competent authorities initiate an anti-dumping or countervailing duty investigation, that Party shall give written notice, which shall include information about the availability of undertakings, to the other Party.

2. In an anti-dumping investigation, where a Party’s competent authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, that Party shall, to the extent possible, inform exporters of the other Party about the availability of undertakings and extend reasonable consideration to undertakings requested by the exporters of the other Party.

3. In a countervailing duty investigation, where a Party’s competent authorities have made a preliminary affirmative determination of subsidisation and injury caused by such subsidisation, that Party shall inform the other Party, and to the extent possible exporters of the other Party, about the availability of undertakings and extend reasonable consideration to undertakings requested by the other Party or the exporters of the other Party.

¹ This is without prejudice to the position each Party takes in the WTO’s Doha Development Agenda negotiations on Rules.