

## **CHAPTER 7 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 as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive goods, 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 (MFN) applied rate of duty on the good in effect on the date on which the safeguard measure is applied; and
  - (ii) the base rate of customs duty specified in the Schedules included in Annex 2-A (Reduction or Elimination of Customs Duties) pursuant to Article 2.4 (Reduction or Elimination of Customs Duties).

#### **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 as far in advance of applying a safeguard measure as practicable, 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(c) of 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, Articles 4.2(a) and 4.2(b) of the Safeguards Agreement are incorporated into and made 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 may 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 two years 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 four years; or
  - (c) beyond the expiration of the transition period, except with the consent of the other Party.
6. No safeguard measure shall be applied again to the import of a good which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.
7. Where the expected duration of the safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.
8. When a Party terminates a safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule included in Annex 2-A (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 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 cause or threaten to cause serious injury to the domestic industry.
2. The applying Party shall notify the other Party before applying a 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 applying Party shall comply with the requirements of Articles 7.2.2 and 7.2.3.

4. The applying Party shall promptly refund any tariff increases if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any provisional measure shall be counted as a part of the duration period of the measure described in Article 7.2.5(b).

#### **Article 7.4: Compensation**

1. No later than 30 days after it applies a 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 reach agreement on compensation within 30 days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The exporting Party shall notify the applying Party in writing at least 30 days before suspending concessions.

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

4. The right of suspension referred to in paragraph 2 shall not be exercised for the first two years that a 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 a measure conforms to this Agreement.

#### **Article 7.5: Global Safeguard Measures**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. 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.

2. On the request of the other Party, the Party intending to take safeguard measures may 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 may 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.

## **Article 7.6: Definitions**

For the purposes of Section A:

**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;

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

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

**threaten to cause serious injury** means to cause 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 (Reduction or 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 Duties**

### **Article 7.7: General Provisions**

1. Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing duties.

2. The Parties agree that anti-dumping and countervailing duties should be used in full compliance with the relevant provisions of WTO Agreements 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 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 Anti-Dumping 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. The Parties shall take due consideration of the comments submitted and make due responses in the final determination.

3. The Parties agree not to take any action in an arbitrary or protectionist manner pursuant to the Anti-Dumping Agreement.

4. Both Parties confirm that there shall be no practice between the two Parties to use a methodology based on surrogate value of a third country, including the use of surrogate price or surrogate cost in determining normal value and export price when determining dumping margin during an anti-dumping procedure.

5. The Parties confirm their current practice of counting toward the average all individual margins, whether positive or negative, when the margins of dumping are established on the weighted-to-weighted basis or transaction-to-transaction basis, or weighted-to-transaction basis, and share their expectation that such practice will continue.<sup>1</sup>

#### **Article 7.8: Notification and Consultations**

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 no later than seven days before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application, and may afford the other Party a meeting or other similar opportunities regarding 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 provide written notification to the other Party of its receipt of the application as soon as possible, and before proceeding to initiate an investigation the Parties shall have consultations with a view to finding a mutually acceptable solution.

#### **Article 7.9: Undertakings**

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, upon the request of the other Party, 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.

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<sup>1</sup> This is without prejudice to the position each Party takes in the WTO's Doha Development Agenda negotiations on Rules.

2. In an anti-dumping investigation, 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 opportunity for meetings, 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, consistent with the Party's 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 opportunity for meetings, 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, consistent with the Party's laws and procedures.

#### **Article 7.10: Verification**

1. The general nature of information to be verified and information which needs to be provided should be notified to the exporters and producers concerned prior to the on-the-spot verification.

2. The result of the verification shall be disclosed to the exporters and producers concerned subject to the verification within a reasonable period after the verification.

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

Each Party 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: Investigation after Termination Resulting from a Review**

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

#### **Article 7.13: Cumulative Assessment**

When imports from more than one country are simultaneously subject to anti-dumping or countervailing duty investigation, a Party shall examine carefully whether the cumulative assessment of the effect from 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 7.14: De-Minimis Standard Applicable to New Shipper Review**

When determining individual margin pursuant to Article 9.5 of the Anti-Dumping Agreement, no duty shall be imposed on exporters or producers in the exporting Party for which it is determined that the dumping margin is less than the *de-minimis* threshold set out in Article 5.8 of the Anti-Dumping Agreement.

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

#### **Article 7.15: 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 Committee will normally meet once a year and may meet more frequently as the Parties may agree.