

## CHAPTER 7 TRADE REMEDIES

### ARTICLE 7.1: DEFINITIONS

For the purposes of Articles 7.2 through 7.7:

- (a) **domestic industry** means, with respect to an imported product, the producers as a whole of the like or directly competitive product operating within the territory of a Party, or those whose collective output of the like or directly competitive product constitutes a major proportion of the total domestic production of those products;
- (b) **bilateral safeguard measure** means a measure described in Article 7.2.2;
- (c) **Safeguards Agreement** means the *Agreement on Safeguards* contained in Annex 1A to the WTO Agreement;
- (d) **serious injury** means a significant overall impairment in the position of a domestic industry;
- (e) **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
- (f) **transition period** means, in relation to a particular product, the three year period from the date of entry into force of this Agreement, except that for any product for which the date on which the customs duty on that product is to be eliminated in accordance with Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) is more than three years, transition period shall mean the tariff elimination period for that product.

### ARTICLE 7.2: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

1. If during the transition period, as a result of the reduction or elimination of a customs duty in accordance with this Agreement, an originating product is being imported into a Party's territory 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 a like or directly competitive product, the importing Party may apply a bilateral safeguard measure described in paragraph 2.

2. If the conditions in paragraph 1 are met, a Party may, only to the extent

necessary to prevent or remedy serious injury and facilitate adjustment:

- (a) suspend the further reduction of any rate of duty provided for under this Agreement on the product; or
- (b) increase the rate of 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 product in effect at the time the measure is applied; and
  - (ii) the MFN applied rate of duty on the product in effect on the day immediately preceding the date of entry into force of this Agreement.<sup>1</sup>

#### ARTICLE 7.3: SCOPE AND DURATION OF BILATERAL SAFEGUARD MEASURES

1. 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; or
  - (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 set out in this Chapter, 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. Regardless of its duration, any such measure shall terminate at the end of the transition period.
2. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.
3. A Party shall not apply a bilateral safeguard measure again on a product which has been subject to a bilateral safeguard measure for a period of time equal to that during which the previous bilateral safeguard measure had been applied, provided that the period of non-application is at least two years. However, no bilateral safeguard measure may be applied more than twice on the same product.
4. Neither Party shall apply a bilateral safeguard measure on a product that is subject to a measure that the Party has applied in accordance with Article XIX of GATT

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<sup>1</sup> The Parties understand that neither tariff rate quotas nor quantitative restrictions would be permissible forms of bilateral safeguard measures.

1994 and the Safeguards Agreement, and neither Party shall maintain a bilateral safeguard measure on a product that becomes subject to a measure that the Party imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

5. On the termination of a bilateral safeguard measure, the Party that applied the bilateral safeguard measure shall apply the rate of customs duty set out in its schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) on the date of termination as if the bilateral safeguard measure had never been applied.

#### ARTICLE 7.4: INVESTIGATION PROCEDURES AND TRANSPARENCY REQUIREMENTS

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

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

#### ARTICLE 7.5: PROVISIONAL BILATERAL SAFEGUARD MEASURES

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to a domestic industry.

2. Before applying a provisional bilateral safeguard measure the applying Party shall notify the other Party and shall, on request of the other Party, initiate consultations after applying such a measure.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Articles 7.2 through 7.4 shall be met. Such a provisional bilateral safeguard measure should take the form of a suspension of the further reduction of any rate of duty provided for under this Agreement on the product or an increase in the customs duties to a rate not exceeding the lesser of the rates in Article 7.2.2(b). Any additional customs duties or guarantees collected shall be promptly refunded if the subsequent investigation referred to in Article 7.4.1 determines that increased imports have not caused, or threatened to cause, serious injury to a domestic industry.

4. The duration of any such provisional bilateral safeguard measure shall be counted as part of the period described in Article 7.3.1.

#### ARTICLE 7.6: NOTIFICATION AND CONSULTATION

1. A Party shall immediately notify the other Party in writing on:
  - (a) initiating a bilateral safeguard investigation;
  - (b) making a finding of serious injury or threat thereof caused by increased imports;
  - (c) taking a decision to apply or extend a bilateral safeguard measure; and
  - (d) taking a decision to liberalise a bilateral safeguard measure previously applied in accordance with Article 7.3.2.
2. In making the notifications referred to in paragraph 1(b) and paragraph 1(c), the Party applying a bilateral safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, the proposed bilateral safeguard measure, the grounds for introducing the bilateral safeguard measure, the proposed date of introduction and its expected duration and timetable for progressive liberalisation. In the case of an extension of a bilateral safeguard measure, the written results of the determination required by Article 7.4, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting, shall also be provided.
3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided in accordance with paragraph 2, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation in accordance with Article 7.7.1.
4. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 7.4 as soon as it is available.

#### ARTICLE 7.7: COMPENSATION

1. A Party applying a bilateral safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed 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. Such consultations shall begin within 30 days of the application of the bilateral safeguard measure.
2. If the Parties are unable to reach an agreement on compensation within 30 days

of the consultations commencing, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions in accordance with paragraph 2 shall terminate on the date of the termination of the safeguard measure.

#### ARTICLE 7.8: GLOBAL SAFEGUARD

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

#### ARTICLE 7.9: ANTI-DUMPING MEASURES

1. Except as otherwise provided for in this Article, each Party retains its rights and obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* contained in Annex 1A to the WTO Agreement.

2. The Parties agree to enhance dialogue in matters of anti-dumping to afford each other fair and transparent treatment. The Parties will afford adequate opportunity for consultations to exchange information on issues raised by the other Party with respect to such matters, including through the regular holding of a High Level Dialogue on Trade Remedies.

#### ARTICLE 7.10: SUBSIDIES AND COUNTERVAILING MEASURES

1. Except as otherwise provided for in this Article, each Party retains its rights and obligations under the *Agreement on Subsidies and Countervailing Measures* contained in Annex 1A to the WTO Agreement.<sup>2</sup>

2. The Parties shall ensure transparency of subsidy measures by exchanging their notifications to the WTO pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the *Agreement on Subsidies and Countervailing Measures*.

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<sup>2</sup> For greater certainty, nothing in this Article affects the Parties' rights and obligations under Article 13.3 of the *Agreement on Subsidies and Countervailing Measures*.

3. As soon as possible after a Party's receipt of a properly documented application for the initiation of a countervailing investigation against the imports from the other Party, the Party shall notify the other Party in writing. Such notification shall include the non-confidential version of the application and its supporting evidence. The investigating authority and the Party being notified shall avoid publicising the existence of the application unless a decision has been made to initiate an investigation.

4. As soon as possible after a properly documented application is accepted, and in any event before the initiation of any investigation, the importing Party shall afford to the other Party reasonable opportunities for consultations with the aim of clarifying the situation on matters raised in the application and arriving at a mutually agreed solution. Investigations into newly-alleged subsidy programs shall be undertaken in a transparent manner with the other Party afforded reasonable opportunities for consultations to defend its interests.

5. The investigating authorities shall carefully review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

6. Throughout the investigation, the other Party shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.