

CHAPTER 5 TRADE REMEDIES

Section A: Safeguard Measures

Article 5.1: Definitions

For purposes of Section A:

competent authority means:

- (a) for Korea, the Korea Trade Commission, or its successor;
and
- (b) for Indonesia, the Ministry of Trade, 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;

safeguard measure means a measure described in Article 5.2;

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 of entry into force of this Agreement, except that for any good for which the Schedule in Annex 2-A (Reduction or Elimination of Custom 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.

Article 5.2: 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 of 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;
- (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 measure is taken; or
 - (ii) the base rate of customs duty specified in the Schedules in Annex 2-A (Reduction or Elimination of Customs Duties) pursuant to Article 2.4 (Reduction or Elimination of Customs Duties); or
 - (iii) 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 5.3: Conditions and Limitations

1. A Party shall notify the other Party in writing immediately after the initiation of an investigation described in paragraph 2, and should conduct a public hearing and consultations after the initiation as practicable with a view to reviewing the information arising from the initiation of the investigation.

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 a part of this Agreement, *mutatis mutandis*.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to

this end, Article 4.2(a) of the Safeguards Agreement is 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 six months 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 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, except with the consent of the other Party.

6. A Party shall not apply a safeguard measure more than once on the same good until a period of time equal to the duration of the previous safeguard measure, including any extension, has elapsed commencing from the termination of the previous safeguard measure, 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 in Annex 2-A (Reduction or Elimination of Custom Duties), would have been in effect but for the measure.

Article 5.4: 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 of 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 may not apply a provisional measure until at least 45 days after the date its competent authorities initiate an investigation.

3. The applying Party shall notify the other Party before applying a safeguard measure on a provisional basis, and shall initiate consultations immediately after applying the measure.

4. The duration of any provisional measure shall not exceed 180 days, during which time the Party shall comply with the requirements of Articles 5.3.2 and 5.3.3.

5. The Party shall promptly refund any tariff increases if the investigation described in Article 5.3.2 does not result in a finding that the requirements of Article 5.2 are met. The duration of any provisional measure shall be counted as part of the period described in Article 5.3.5(b).

Article 5.5: Compensation

1. Within 30 days after a Party applies a safeguard measure, the 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 through consultations under paragraph 1 within 30 days after the 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 safeguard measure.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first two years that the 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 the provisions of this Section.
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 safeguard measure terminates.
5. Any compensation shall be based on the total period of application of the provisional safeguard measure and of the safeguard measure.

Article 5.6: 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 measures 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 a global safeguard measure may provide immediately ad hoc written notification of all pertinent information on the initiation of a safeguard investigation, the preliminary determination and the final finding of the investigation.
3. Neither Party may 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.

Notwithstanding the provisions of this Article, neither Party may impose a safeguard measure on a good to which a measure is being applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, a measure on a good to which a safeguard measure is being applied, it shall terminate the safeguard measure prior to the imposition of the measure to be applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Section B: Anti-Dumping and Countervailing Duties

Article 5.7: 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 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 Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing, and interested parties shall be allowed sufficient time to make their comments.

3. The Parties shall 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 Anti-Dumping Agreement regardless of the comparison bases under Article 2.4.2 of the Anti-Dumping Agreement, all individual margins, whether positive or negative, should be counted toward the average;
- (b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, the Party taking such a decision may 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;
- (c) When a Party considers imposing an anti-dumping or countervailing duty, careful consideration should be given to the interests of the other Party; and
- (d) The investigating Party shall request an exporter or producer in the territory of the other Party for a timely response to its questionnaires. When the investigating Party finds major deficiency in information in a questionnaire response from relevant exporter or producer received before the deadline or requires clarifications for

purposes of investigation, the investigating Party shall demand missing information or request clarification of information concerning the answers to the questionnaires. This procedure shall not be used to cause unwarranted delays in the investigation or to circumvent the deadlines.

Article 5.8: Notification and Consultations

1. Upon 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 15 days before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application.

2. 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.

3. The Parties affirm their rights and obligations under Annex II of the Anti-Dumping Agreement and in particular its paragraph 5, and under Articles 12.7 and 12.8 of the SCM Agreement. In the event the investigating authorities intend to make a determination on the basis of the facts available pursuant to Article 6.8 of the Anti-Dumping Agreement and Article 12.7 of the SCM Agreement, the investigating authorities shall provide a reasoned and adequate explanation of:

- (a) indication of conditions under which the use of facts available is applicable;
- (b) the information which interested parties have failed to submit to the investigating authorities; and
- (c) the facts with which the investigating authorities decided to replace the information referred to in subparagraph (b).

Article 5.9: Investigation after Termination Resulting from a Review

A Party shall examine, with special care, any application for initiation of an anti-dumping investigation on an originating good of the other Party on which anti-dumping measures have been terminated in the previous 12 months as a result of a review. Unless this pre-initiation examination indicates that the

circumstances have changed, the investigation shall not proceed.

Article 5.10: Cumulative Assessment

When imports from more than one country are simultaneously subject to an anti-dumping or countervailing duty investigation, a Party shall examine, with special care, whether the cumulative assessment of the effect of the imports from 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 5.11: Cooperation in Anti-Circumvention Investigations

1. The Parties agree to cooperate in preventing circumvention in accordance with Articles 5 and 6 of the Anti-Dumping Agreement.
2. The Parties agree to carry out anti-circumvention investigations in a transparent way and to respect the right of all interested parties to defend their concerns in every step of the anti-circumvention investigation.
3. At the request of the other Party, the Party conducting an anti-circumvention investigation shall provide non-confidential information regarding the companies under investigation to the other Party.
4. In any proceedings in which a Party determines to conduct an on-site verification in the territory of the other Party, it shall notify the companies under investigation in advance.
5. The Party conducting an anti-circumvention investigation shall inform, before the final determination, all interested parties in the territory of the other Party of the essential facts under consideration, which form the basis for the assessment on whether to apply the measure or to grant an exemption. The Party will provide adequate opportunity for all interested parties to make comments on such assessment. Such disclosure of the essential facts should take place within a reasonable period of time for interested parties to defend their interests. Interested parties may also apply to be heard.