

CHAPTER 7 TRADE REMEDIES

Section A: Bilateral Safeguard Measures

ARTICLE 7.1: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

1. 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;
- (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 at the time the action is taken; and
 - (ii) the base rate of customs duty specified in the Schedules included in Annex 2-B (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 apply a bilateral safeguard measure only following an investigation by the Party's competent authority 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*.

2. In the investigation described in paragraph 1, 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*.

3. Each Party shall ensure that its competent authority completes any such investigation within one year of its date of initiation.

4. Neither Party may 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 two years except that the period may be extended by up to one year if the competent authority of the importing Party determines, 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 three years; and
- (c) beyond the expiration of the transition period, except if the Committee on Trade in Goods decides otherwise.

5. Bilateral safeguard measures may not be applied in the first year of the transition period.

6. Neither Party may apply a bilateral safeguard measure more than once against the same good.

7. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 1 and shall consult with the other Party in advance of applying a bilateral safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the proposed measure, including ways to address any related issues. Such a consultation shall not be construed to prevent the Party from applying a bilateral safeguard measure pursuant to conditions and limitations set out in this Article.

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

9. 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 authority 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 that such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2. Before a Party's competent authority 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 bilateral 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 authority initiates an investigation.

3. The applying Party shall notify the other Party before applying a bilateral safeguard measure on a provisional basis. At the request of the other Party, the Party intending to take a provisional measure, shall offer the possibility for consultations in advance of applying the provisional measure. If due to critical circumstances, consultations cannot be held prior to applying the provisional measure, the consultations shall take place immediately following the application of the provisional measure.

4. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 7.2.1 and 7.2.2.

5. The Party shall promptly refund any tariff increases if the investigation described in Article 7.2.1 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 7.2.4(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 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.

4. 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, the Safeguards Agreement and Article V of the Agreement on Agriculture. 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, the Safeguards Agreement and Article V of the Agreement on Agriculture, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party from that measure if such imports are not a substantial cause of serious injury or threat thereof.

2. The competent investigating authority shall determine whether the imports from the other Party are a substantial cause of serious injury or threat thereof considering such factors as the import share, the change of the import share and the level and change in the level of imports of the other Party.

3. At the request of the other Party, the Party intending to take a global safeguard measure shall provide immediately written notification of all pertinent information on the initiation of a safeguard investigation, the preliminary determination and the final determination of the investigation.

4. 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:

competent investigating authority means:

- (a) for Korea, the Korea Trade Commission, or its successors; and
- (b) for Israel, the Commissioner of Trade Levies in the Ministry of Economy and Industry or the corresponding unit in the Ministry of Agriculture and Rural Development, or its successors; and

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;

bilateral safeguard measure means a measure described in Article 7.1;

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 the period from the date of entry into force of this Agreement until 5 years from the date of completion of tariff reduction or elimination in accordance with that Party's schedule of tariff commitments in Annex 2-B.

Section B: Anti-dumping and Countervailing Duties

ARTICLE 7.7: 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 *Agreement on Implementation of Article VI of GATT 1994*, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Anti-Dumping Agreement") and the *Agreement on Subsidies and Countervailing Measures*, contained in Annex 1A to the WTO Agreement (hereinafter referred to as 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 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.

3. 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 7.8: NOTIFICATION AND CONSULTATION

1. After receipt by a Party's competent authority 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 at the earliest practicable opportunity to the other party of its receipt of the application and 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 authority 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 authority regarding the application.

ARTICLE 7.9: UNDERTAKINGS

Each Party shall maintain procedures for the receipt of price undertakings in accordance with its law.

ARTICLE 7.10: LESSER DUTY RULE

Should a Party decide to impose an anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, and it should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 7.11: CONSIDERATION OF PUBLIC INTEREST

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

ARTICLE 7.12: PROHIBITION OF ZEROING

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.

ARTICLE 7.13: PUBLIC HEARING

In accordance with its law, 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.

Section C: Institutional Provisions

ARTICLE 7.14: COMMITTEE ON TRADE IN GOODS

The Parties shall discuss matters relating to this Chapter within the Committee on Trade in Goods established pursuant to Article 2.17(Committee on Trade in Goods).