

CHAPTER THREE

TRADE REMEDIES

SECTION A

BILATERAL SAFEGUARD MEASURES

ARTICLE 3.1

Application of a Bilateral Safeguard Measure

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, originating goods of a Party are being imported into the territory of the other 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 like or directly competitive goods, the importing Party may adopt measures provided for in paragraph 2 in accordance with the conditions and procedures laid down in this Section.
2. The importing Party may take a bilateral safeguard measure which:
 - (a) suspends further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or
 - (b) increases the rate of customs duty on the good to a level which does not exceed the lesser of:
 - (i) the MFN applied rate of customs 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 included in Annex 2-A (Elimination of Customs Duties) pursuant to Article 2.5.2 (Elimination of Customs Duties).

ARTICLE 3.2

Conditions and Limitations

1. A Party shall notify the other Party in writing of the initiation of an investigation described in paragraph 2 and 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 measure.

2. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authorities in accordance with Articles 3 and 4.2(c) of the *Agreement on Safeguards* contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Agreement on Safeguards") and to this end, Articles 3 and 4.2(c) of the Agreement on Safeguards 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 Article 4.2(a) of the Agreement on Safeguards and to this end, Article 4.2(a) of the Agreement on Safeguards is 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 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 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. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to its Schedule included in Annex 2-A (Elimination of Customs Duties), would have been in effect but for the measure.

ARTICLE 3.3

Provisional Measures

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 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 serious injury, or threat thereof, to the domestic industry. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the

requirements of Articles 3.2.2 and 3.2.3. The Party shall promptly refund any tariff increases if the investigation described in Article 3.2.2 does not result in a finding that the requirements of Article 3.1 are met. The duration of any provisional measure shall be counted as part of the period prescribed by Article 3.2.5(b).

ARTICLE 3.4

Compensation

1. A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on 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 safeguard measure. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the consultations begin, the Party whose goods are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the Party applying the safeguard measure.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the safeguard measure conforms to the provisions of this Agreement.

ARTICLE 3.5

Definitions

For the purposes of this Section:

serious injury and **threat of serious injury** shall be understood in accordance with Article 4.1(a) and (b) of the Agreement on Safeguards. To this end, Article 4.1(a) and (b) is incorporated into and made part of this Agreement, *mutatis mutandis*; and

transition period means a period for a good from the date of entry into force of this Agreement until 10 years from the date of completion of tariff reduction or elimination as set out in Annex 2-A as the case may be for each good.

SECTION B

AGRICULTURAL SAFEGUARD MEASURES

ARTICLE 3.6

Agricultural Safeguard Measures

1. A Party may apply a measure in the form of a higher import duty on an originating agricultural good listed in its Schedule included in Annex 3, consistent with paragraphs 2 through 8, if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in its Schedule included in Annex 3.
2. The duty under paragraph 1 shall not exceed the lesser of the prevailing MFN applied rate, or the MFN applied rate of duty in effect on the day immediately preceding 1 July 2011, or the tariff rate set out in the Party's Schedule included in Annex 3.
3. The duties each Party applies under paragraph 1 shall be set according to its Schedules included in Annex 3.
4. Neither Party may apply or maintain an agricultural safeguard measure under this Article and at the same time apply or maintain with respect to the same good:
 - (a) a bilateral safeguard measure in accordance with Article 3.1;
 - (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards; or
 - (c) a special safeguard measure under Article 5 of the Agreement on Agriculture.
5. A Party shall implement any agricultural safeguard measure in a transparent manner. Within 60 days after imposing an agricultural safeguard measure, the Party applying the measure shall notify the other Party in writing and provide the other Party with relevant data concerning the measure. On the written request of the exporting Party, the Parties shall consult regarding the application of the measure.
6. The implementation and operation of this Article may be the subject of discussion and review in the Committee on Trade in Goods referred to in Article 2.16 (Committee on Trade in Goods).
7. Neither Party may apply or maintain an agricultural safeguard measure on an originating agricultural good:
 - (a) if the period specified in the agricultural safeguard provisions of its Schedule included in Annex 3 has expired; or
 - (b) if the measure increases the in-quota duty on a good subject to a TRQ set out in Appendix 2-A-1 of its Schedule included in Annex 2-A (Elimination of Customs Duties).
8. Any supplies of the goods in question which were en route on the basis of a

contract made before the additional duty is imposed under paragraphs 1 through 4 shall be exempted from any such additional duty, provided that they may be counted in the volume of imports of the goods in question during the following year for the purpose of triggering paragraph 1 in that year.

SECTION C

GLOBAL SAFEGUARD MEASURES

ARTICLE 3.7

Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards. Unless otherwise provided in this Article, this Agreement does not confer any additional rights or impose any additional obligations on the Parties with regard to measures taken under Article XIX of GATT 1994 and the Agreement on Safeguards.
2. At the request of the other Party, and provided it has a substantial interest, the Party intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information on the initiation of a safeguard investigation, the provisional findings and the final findings of the investigation.
3. For the purposes of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported goods during the most recent three-year period of time, measured in terms of either absolute volume or value.
4. Neither Party may apply, with respect to the same good, at the same time:
 - (a) a bilateral safeguard measure in accordance with Article 3.1; and
 - (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards.
5. Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Section.

SECTION D

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 3.8

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. In order to ensure the maximum efficiency in handling anti-dumping or countervailing duty investigations, and in particular considering the adequate right of defence, the use of English shall be accepted by the Parties for documents filed in anti-dumping or countervailing duty investigations. Nothing in this paragraph shall prevent Korea from requesting a clarification written in Korean if:

- (a) the meaning of the documents filed is not deemed reasonably clear by Korea's investigating authorities for the purposes of the anti-dumping or countervailing duty investigation; and
- (b) the request is strictly limited to the part which is not reasonably clear for the purposes of the anti-dumping or countervailing duty investigation.

4. Provided that it does not unnecessarily delay the conduct of the investigation, 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 3.9

Notification

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

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 and afford the other Party a meeting to consult with its competent authorities regarding the application.

ARTICLE 3.10

Consideration of Public Interests

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

ARTICLE 3.11

Investigation after Termination Resulting from a Review

The Parties agree to examine, with special care, 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. Unless this pre-initiation examination indicates that the circumstances have changed, the investigation shall not proceed.

ARTICLE 3.12

Cumulative Assessment

When imports from more than one country are simultaneously subject to anti-dumping or countervailing duty investigation, a Party shall examine, with special care, whether the cumulative assessment of the effect of 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 3.13

De-minimis Standard Applicable to Review

1. Any measure subject to a review pursuant to Article 11 of the Anti-Dumping Agreement shall be terminated where it is determined that the likely recurring dumping margin is less than the *de-minimis* threshold set out in Article 5.8 of the Anti-Dumping Agreement.
2. When determining individual margins 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, on the basis of representative export sales, that the dumping margin is less than the *de-minimis* threshold set out in Article 5.8 of the Anti-Dumping Agreement.

ARTICLE 3.14

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 3.15

Dispute Settlement

Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Section.

SECTION E

INSTITUTIONAL PROVISIONS

ARTICLE 3.16

Working Group on Trade Remedy Cooperation

1. The Working Group on Trade Remedy Cooperation established pursuant to Article 15.3.1 (Working Groups) is a forum for dialogue for trade remedy cooperation.
2. The functions of the Working Group shall be to:
 - (a) enhance a Party's knowledge and understanding of the other Party's trade remedy laws, policies and practices;
 - (b) oversee the implementation of this Chapter;
 - (c) improve cooperation between the Parties' authorities having responsibility for matters on trade remedies;
 - (d) provide a forum for the Parties to exchange information on issues relating to anti-dumping, subsidies and countervailing measures and safeguards;

- (e) provide a forum for the Parties to discuss other relevant topics of mutual interest including;
 - (i) international issues relating to trade remedies, including issues relating to the WTO Doha Round Rules negotiations; and
 - (ii) practices by the Parties' competent authorities in anti-dumping, and countervailing duty investigations such as the application of "facts available" and verification procedures; and
- (f) cooperate on any other matters that the Parties agree as necessary.

3. The Working Group shall normally meet annually and, if necessary, additional meetings could be organised at the request of either Party.