

## **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 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 in the territory of the importing Party, the Party may take a safeguard measure in the form of:

- (a) suspending the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increasing 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; or
  - (ii) the base rate of customs duty specified in the Schedule to Annex 2-A (Reduction or Elimination of Customs Duties) pursuant to Article 2.3 (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 a 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 a part of this Agreement, *mutatis mutandis*.

4. Each Party shall ensure that its competent authorities complete any such investigation within one year of the 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. Neither Party may apply a safeguard measure more than once against the same good.
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 customs duty rate shall be the rate that, according to the Party's Schedule to 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 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 setting out 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 after applying the measure.

4. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of paragraphs 2 and 3 of Article 7.2.

5. The Party shall promptly refund any tariff increase if the investigation described in paragraph 2 of Article 7.2 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 subparagraph 5(b) of Article 7.2.

#### **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 agree on compensation through consultations under paragraph 1 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 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 safeguard measure terminates.

4. Any compensation shall be based on the total period of application of the provisional safeguard measure and of the safeguard measure.

5. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a safeguard measure is in effect, provided that the safeguard measure has been applied as a result of an absolute increase in imports and that the safeguard measure conforms to the provisions of 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, 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. Upon request of the other Party, the Party intending to take safeguard measures shall promptly provide 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.

## **Section B : Anti-dumping and Countervailing Duties**

### **Article 7.6 : 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 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; and
  - (c) the investigating Party shall request an exporter or producer in the territory of the other Party for the 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 the 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 which are provided in the Party's domestic laws and regulations.

#### **Article 7.7 : 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 and afford the other Party a meeting or other similar opportunities regarding the application, consistent with the Party's domestic laws and regulations.
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.

#### **Article 7.8 : Undertakings**

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, 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 timeframes for offering and concluding any such undertaking if practicable.
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 adequate opportunity for consultations, 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, through the means provided for in the Party's domestic laws, regulations 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 adequate opportunity for consultations, to the other Party and exporters of the other Party, regarding proposed undertakings on price, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the Party's domestic laws, regulations and procedures.

#### **Article 7.9 : 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 7.10 : 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 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.

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

#### **Article 7.11 : Committee on Trade Remedies**

1. The Parties hereby establish a Committee on Trade Remedies (hereinafter referred to as the “Committee”), comprising representatives at an appropriate level from relevant agencies of each Party who have responsibility for trade remedies matters, including anti-dumping, subsidies and countervailing measures, and safeguards issues.

2. The functions of the Committee shall include:

- (a) enhancing a Party’s knowledge and understanding of the other Party’s trade remedies laws, regulations, policies and practices;
- (b) overseeing the implementation of this Chapter;
- (c) improving cooperation between the Parties’ authorities having responsibility for matters on trade remedies;
- (d) providing a forum for the Parties to exchange information on issues relating to anti-dumping, subsidies and countervailing measures and safeguards;
- (e) providing 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) cooperating on any other matter that the Parties agree as necessary.

3. The Committee shall meet at least once a year and may meet more frequently as the Parties may agree.

## **Section D : Definitions**

### **Article 7.12 : Definitions**

For the purposes of this Chapter:

**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;

**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 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.