CHAPTER 7

TRADE REMEDIES

Section A: Safeguard Measures

Article 7.1: Definitions

For purposes of this Chapter:

confidential information includes information which is provided on a confidential basis and which is by its nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information);

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive goods operating within the territory of a Party, or those producers whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of that good;

provisional safeguard measure means a safeguard measure described in Article 7.8;

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;

transitional safeguard measure means a safeguard measure described in Article 7.2; and

transition period means, in relation to a particular good, the 10-year period from the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the tariff elimination for that good.

Article 7.2: Application of Transitional Safeguard Measures

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 as to cause or threaten to cause serious injury to its domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to prevent or remedy the serious injury to its domestic industry and to facilitate its domestic industry's adjustment:

(a) suspend the further reduction of any rate of customs duty provided for in this Agreement; or

(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 customs duty in effect on the day when the transitional safeguard measure is applied; or

(ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. The Parties understand that neither tariff rate quotas nor quantitative restrictions are permissible forms of transitional safeguard measures.

Article 7.3: Notification and Consultation

1. A Party shall immediately deliver a written notice to the other Party upon:

(a) initiating an investigation referred to in Article 7.4 relating to serious injury or threat of serious injury and the reasons for it;

(b) making a finding of serious injury or threat of serious injury caused by increased imports;

(c) applying or extending the imposition of a transitional safeguard measure; and

(d) taking a decision to modify, including to progressively

liberalise, a transitional safeguard measure.

2. A written notice referred to in paragraph 1(a) shall include:

(a) a precise description of the good subject to the investigation including its heading and subheading under the Harmonized System and the national nomenclature of the Party;

(b) a summary of the reason for the initiation of the investigation; and

(c) the date of the initiation of the investigation and the period of investigation.

3. A Party shall provide to the other Party a copy or the Uniform Resource Locator of the public version of the report by its competent authorities that is required under Article 7.4.1. On request of the other Party, a Party shall provide the report in English language. The report in the English language shall be deemed as reference and original language shall prevail in any case.

4. A written notice referred to in paragraphs 1(b) through (d) shall include:

(a) a precise description of the good subject to the transitional safeguard measure including its heading and subheading under the Harmonized System and the national nomenclature of the Party;

(b) evidence of the serious injury or threat of serious injury caused by increased imports of the good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement;

(c) a precise description of the proposed transitional safeguard measure;

(d) the proposed date of the introduction of the transitional safeguard measure, its expected duration, and, if applicable, a timetable for the progressive liberalisation of the transitional safeguard measure referred to in Article 7.5.3; and

(e) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

5. A Party proposing to apply or extend a transitional safeguard measure shall provide adequate opportunity for prior consultations with the other Party,

with a view to, inter alia, reviewing the information provided under paragraphs 2 and 4 that has arisen from the investigation referred to in Article 7.4, exchanging views on the transitional safeguard measure, and reaching an understanding on ways to achieve the objective set out in Article 7.7.

Article 7.4: Investigation Procedures

1. A Party shall apply a transitional safeguard measure only following an investigation by its competent authorities in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the Safeguards Agreement. To this end, Article 3 and Article 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 the investigation referred to in paragraph 1 within one year following its date of initiation.

Article 7.5: Scope and Duration of Transitional Safeguard Measures

1. No Party shall apply a transitional safeguard measure:

   (a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate its domestic industry's adjustment;

   (b) for a period exceeding three years, except that in exceptional circumstances, the period may be extended by up to one year if the competent authorities of the Party that applies the transitional safeguard measure determines, in conformity with the procedures specified in this Article, that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry concerned is adjusting, provided that the total period of application of a provisional and transitional safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years; or

   (c) beyond the expiration of the transitional safeguard period.

2. No transitional safeguard measure shall be applied to the import of an originating good for a period of three year from the date on which the first tariff reduction or tariff elimination takes effect for that originating good as committed under this Agreement.

3. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure exceeds one year, the Party applying the transitional safeguard measure shall progressively liberalise the transitional safeguard measure at regular intervals during its period of application.

4. When a Party terminates a transitional safeguard measure, the rate of customs duty for the originating good subject to that transitional safeguard measure shall be the rate that, according to that Party's Schedule in Annex 2-A (Schedules of Tariff Commitments), would have been in effect but for that transitional safeguard measure.

5. A Party shall not apply a transitional safeguard measure more than once on the same good.

Article 7.6: Negligible Imports

A provisional or transitional safeguard measure shall not be applied to an originating good of a Party, as long as that Party's share of imports of the good concerned in the importing Party does not exceed three percent of the total imports of that good.

Article 7.7: Compensation

1. A Party proposing to apply or extend a transitional safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed, adequate means of trade compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the measure. The Party applying a transitional safeguard measure shall provide the other Party with the opportunity to consult within 30 days of the date on which the transitional safeguard measure was applied.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade compensation within 30 days of the commencement of such consultations, the Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade in goods of the Party applying the transitional safeguard measure.

3. A Party against whose good a transitional safeguard measure is applied shall deliver a written notice to the Party applying the transitional safeguard measure at least 30 days before it suspends the application of concessions in accordance with paragraph 2.

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

5. The right to suspend the application of concessions in accordance with paragraph 2 shall not be exercised for the first two years during which the transitional safeguard measure is in effect, provided that the transitional safeguard measure has been applied as a result of an absolute increase in imports and that it conforms to this Agreement.

Article 7.8: Provisional Safeguard Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, an importing Party may apply a provisional safeguard measure, which shall take the form of the measures set out in Articles 7.2.1(a) or 7.2.1(b), 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 increased imports have caused or are threatening to cause serious injury to a domestic industry of the importing Party.

2. A Party shall deliver a written notice to the other Party prior to applying a provisional safeguard measure. Consultations shall be initiated immediately after the provisional safeguard measure is applied.

3. The duration of any provisional safeguard measure shall not exceed 200 days, during which period the Party applying that provisional safeguard measure shall comply with the requirements of Article 7.4.1. If the investigation referred to in Article 7.4.1 does not result in a finding that the requirements of Article 7.2 are met, the Party applying the provisional safeguard measure shall promptly refund any additional customs duties collected as a result of the provisional safeguard measure. For greater certainty, the duration of any provisional safeguard measure shall be counted as part of the total period prescribed by Article 7.5.1(b).

4. Articles 7.2.2, 7.5.4, 7.10.1 and 7.10.2 shall apply, *mutatis mutandis*, to a provisional safeguard measure.

Article 7.9: 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. A Party taking any global safeguard measure pursuant to Article XIX of GATT 1994 and the Safeguards Agreement may exclude imports of an originating product of the other Party from the action where such imports are not a cause of serious injury or threat thereof.

2. On request of the other Party, a Party intending to take safeguard measures pursuant to Article XIX of GATT 1994 and the Safeguards Agreement shall immediately provide written notice or Uniform Resource Locator of all pertinent information required under Articles 12.1, 12.2 and 12.4 of the Safeguards Agreement on the initiation of a safeguard investigation, the preliminary determination, and the final finding of the investigation. A Party shall be deemed to be in compliance with this paragraph if it has notified the measure to the WTO Committee on Safeguards in accordance with Article 12 of the Safeguards Agreement.

3. No Party shall apply, with respect to the same good, at the same time:

(a) provisional or transitional safeguard measure; and

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Article 7.10: Other Provisions

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws and regulations relating to transitional safeguard measures.

2. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures relating to transitional safeguard measures.

3. A written notice referred to in Articles 7.3.1, 7.7.3 and 7.8.2 shall be in the English language.

Section B: Anti-Dumping and Countervailing Duties

Article 7.11: General Provisions

1. The Parties retain their rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement. This Section affirms and builds on those rights and obligations.

2. In any proceeding in which the investigating authorities of a Party determine to conduct an on-the-spot investigation to verify information provided by a respondent[1] and pertinent to the calculation of anti-dumping duty margins or the level of a countervailable subsidy, the investigating authorities shall promptly notify that respondent of their intent, and:

(a) shall endeavour to provide to the respondent at least seven days advance notice of the date on which investigating authorities intend to conduct any such on-the-spot investigation to verify the information; and

(b) shall endeavour to, at least seven days prior to any such on-the-spot investigation to verify the information, provide the respondent with a document that sets forth the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation the respondent is to make available for review,

provided that the implementation of subparagraphs (a) and (b) does not unnecessarily delay the conduct of the investigation.

3. A Party's investigating authorities shall maintain a non- confidential file for each investigation and review containing:

(a) all non-confidential documents which are part of the record of the investigation or review; and

(b) to the extent feasible without revealing confidential information, non-confidential summaries of confidential information contained in the record of each investigation or review.

4. During an investigation or review, a Party's investigating authorities shall make the non-confidential file of the investigation or review available to interested parties either:

(a) physically for inspection and copying during the investigation authorities' normal business hours; or

(b) electronically.

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[1] For purposes of this paragraph, "respondent" means a producer, a manufacturer, an exporter, an importer, and, where appropriate, a government or government entity, that is required by a Party's investigating authorities to respond to an anti-dumping or countervailing duty questionnaire.

Article 7.12: Notification and Consultations

1. On receipt by a Party's competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, the Party shall endeavour to provide written notice to the other Party of its receipt of the application at least seven days before initiating such an anti-dumping investigation.

2. On 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 endeavour to provide written notice to the other Party of its receipt of the application at least 20 days in advance of the date of initiation of a countervailing investigation and invite the other Party for consultations on the application. The Party concerned will endeavour to hold consultations within that period.

3. In view of the consultations referred to in paragraph 2, the Party intending to initiate the investigation referred to in paragraph 2 shall, before the initiation of the investigation, on request of the other Party, provide the non-confidential version of the complaint to the other Party. The Party intending to initiate the investigation shall endeavour to provide adequate opportunity for the other Party to comment on and submit additional information or documents, as appropriate and in conformity with the procedural rules provided for in the laws and regulations of the Party.

Article 7.13: Prohibition of Zeroing

When margins of dumping are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the AD Agreement, all individual margins, whether positive or negative, shall be counted for weighted average-to-weighted average and transaction-to-transaction comparison. Nothing in this Article shall prejudice or affect a Party's rights and obligations under the second sentence of Article 2.4.2 of the AD Agreement in relation to weighted average-to-transaction comparison.

Article 7.14: Disclosure of the Essential Facts

Each Party shall ensure, to the extent possible at least 10 days before the final determination, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision to apply measures, without prejudice to Article 6.5 of the AD Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing and allow interested parties sufficient time to provide their comments. The investigating authorities of a

Party should, in their final determination, take into account such comments, if the comments have been received in the time frames established by that Party's laws and regulations or by its investigating authorities.

Article 7.15: Treatment of Confidential Information

The investigating authorities of a Party shall require interested parties providing confidential information to furnish non-confidential summaries of such information, as referred to in Article 6.5.1 of the AD Agreement and Article 12.4.1 of the SCM Agreement. The non-confidential summaries referred to in Article 6.5.1 of the AD Agreement and Article 12.4.1 of the SCM Agreement shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence in order to allow other interested parties in the investigation an opportunity to respond and defend their interests, consistent with Article 6.2 of the AD Agreement and Article 12.2 of the SCM Agreement.

Article 7.16: Non-Application of Dispute Settlement

Chapter 17 (Dispute Settlement) shall not apply to any matter arising under this Section. The applicability of dispute settlement to this Section will be subject to review in accordance with Article 19.1 (General Review).