

## CHAPTER 7

### TRADE REMEDIES

#### SECTION A RCEP SAFEGUARD MEASURES

##### Article 7.1: Definitions

For the purposes of this Chapter:

- (a) **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);
- (b) **customs duty** means customs duties as defined in subparagraph (b) of Article 2.1 (Definitions);
- (c) **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;
- (d) **originating good** means an originating good as defined in subparagraph (l) of Article 3.1 (Definitions);
- (e) **provisional RCEP safeguard measure** means a safeguard measure described in paragraph 1 of Article 7.8 (Provisional RCEP Safeguard Measures);
- (f) **serious injury** means a significant overall impairment in the position of a domestic industry;
- (g) **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;

- (h) **transitional RCEP safeguard measure** means a safeguard measure described in Article 7.2 (Application of Transitional RCEP Safeguard Measures); and
- (i) **transitional safeguard period** means, in relation to a particular good, the period from the date of entry into force of this Agreement until eight years after the date on which the elimination or reduction of the customs duty on that good is completed, in accordance with a Party's Schedule of tariff commitments in Annex I (Schedules of Tariff Commitments).

## **Article 7.2: Application of Transitional RCEP Safeguard Measures**

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of another Party or Parties collectively 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 on the originating good; or
  - (b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:
    - (i) the most-favoured-nation applied rate of customs duty in effect on the day when the transitional RCEP safeguard measure is applied; or
    - (ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement for that Party.
2. The Parties understand that neither tariff rate quotas nor quantitative restrictions are permissible forms of transitional RCEP safeguard measures.

3. On request of any Party, the Committee on Goods may, no later than three years before the end of the transitional safeguard period, discuss and review the implementation and operation, including the duration, of the transitional RCEP safeguard measures.

### **Article 7.3: Notification and Consultation**

1. A Party shall immediately deliver a written notice to the other Parties upon:
  - (a) initiating an investigation referred to in Article 7.4 (Investigation Procedures) 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 RCEP safeguard measure; and
  - (d) taking a decision to modify, including to progressively liberalise, a transitional RCEP safeguard measure.
2. A written notice referred to in subparagraph 1(a) shall include:
  - (a) a precise description of the originating 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 Parties a copy or the Uniform Resource Locator of the public version of the report by its competent authorities that is required under paragraph 1 of Article 7.4 (Investigation Procedures). The provided report may be in the language originally used in the report by its competent authorities.
4. A written notice referred to in subparagraphs 1(b) through (d) shall include:

- (a) a precise description of the originating good subject to the transitional RCEP 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 originating good of another Party or Parties as a result of the reduction or elimination of a customs duty pursuant to this Agreement;
  - (c) a precise description of the proposed transitional RCEP safeguard measure;
  - (d) the proposed date of the introduction of the transitional RCEP safeguard measure, its expected duration, and, if applicable, a timetable for the progressive liberalisation of the transitional RCEP safeguard measure referred to in paragraph 3 of Article 7.5 (Scope and Duration of Transitional RCEP Safeguard Measures); and
  - (e) in the case of an extension of the transitional RCEP safeguard measure, evidence that the domestic industry concerned is adjusting.
5. A Party proposing to apply or extend a transitional RCEP safeguard measure shall provide adequate opportunity for prior consultations with the Parties that have a substantial interest as exporters of the good concerned, 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 (Investigation Procedures), exchanging views on the transitional RCEP safeguard measure, and reaching an understanding on ways to achieve the objective set out in Article 7.7 (Compensation).

#### **Article 7.4: Investigation Procedures**

1. A Party shall apply a transitional RCEP safeguard measure only following an investigation by its competent authorities in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Safeguards Agreement. To this end, Article 3 and paragraph 2 of Article 4 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 RCEP Safeguard Measures**

1. No Party shall apply a transitional RCEP 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 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 RCEP safeguard measure determines, in conformity with the procedures specified in this Article, that the transitional RCEP 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 RCEP safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years. Notwithstanding this provision, a Least Developed Country Party may extend its transitional RCEP safeguard measure for an additional period of one year; or
  - (c) beyond the expiration of the transitional safeguard period.
2. No transitional RCEP safeguard measure shall be applied to the import of an originating good for a period of one 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 RCEP safeguard measure exceeds one year, the Party applying the transitional RCEP safeguard measure shall progressively liberalise the transitional RCEP safeguard measure at regular intervals during its period of application.

4. When a Party terminates a transitional RCEP safeguard measure, the rate of customs duty for the originating good subject to that transitional RCEP safeguard measure shall be the rate that, according to that Party's Schedule in Annex I (Schedules of Tariff Commitments), would have been in effect but for that transitional RCEP safeguard measure.
5. No transitional RCEP safeguard measure shall be applied again to the import of a particular originating good that has been subject to a transitional RCEP safeguard measure, for a period of time equal to the duration of the previous transitional RCEP safeguard measure or one year since the expiry of such measure, whichever is longer.

#### **Article 7.6: *De Minimis* Imports and Special Treatment**

1. A provisional or transitional RCEP 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 per cent of the total imports of that good from all the Parties, provided that those Parties with less than three per cent import share collectively account for not more than nine per cent.
2. A provisional or transitional RCEP safeguard measure shall not be applied to an originating good of any Least Developed Country Party.

#### **Article 7.7: Compensation**

1. A Party proposing to apply or extend a transitional RCEP safeguard measure shall, in consultation with the exporting Parties that would be affected by such a measure, provide to those exporting Parties 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 RCEP safeguard measure shall provide those exporting Parties that would be affected by such a measure with the opportunity to consult within 30 days of the date on which the transitional RCEP 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, any Party against whose good the transitional RCEP safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade in goods of the Party applying the transitional RCEP safeguard measure.
3. A Party against whose good a transitional RCEP safeguard measure is applied shall deliver a written notice to the Party applying the transitional RCEP 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 RCEP safeguard measure.
5. The right to suspend the application of concessions in accordance with paragraph 2 shall not be exercised for the first three years during which the transitional RCEP safeguard measure is in effect, provided that the transitional RCEP safeguard measure has been applied as a result of an absolute increase in imports and that it conforms to this Agreement.
6. A Least Developed Country Party that applies or extends a transitional RCEP safeguard measure shall not be requested for any compensation by the affected Parties.

#### **Article 7.8: Provisional RCEP Safeguard Measures**

1. In critical circumstances where delay would cause damage that would be difficult to repair, an importing Party may apply a provisional RCEP safeguard measure, which shall take the form of the measures set out in subparagraph 1(a) or (b) of Article 7.2 (Application of Transitional RCEP Safeguard Measures), pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from another Party or Parties 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 Parties prior to applying a provisional RCEP safeguard measure. Consultations with the Parties that have a substantial interest as exporters of the good concerned on the application of the provisional RCEP safeguard measure shall be initiated immediately after the provisional RCEP safeguard measure is applied.
3. The duration of any provisional RCEP safeguard measure shall not exceed 200 days, during which period the Party applying that provisional RCEP safeguard measure shall comply with the requirements of paragraph 1 of Article 7.4 (Investigation Procedures). If the investigation referred to in paragraph 1 of Article 7.4 (Investigation Procedures) does not result in a finding that the requirements of Article 7.2 (Application of Transitional RCEP Safeguard Measures) are met, the Party applying the provisional RCEP safeguard measure shall promptly refund any additional customs duties collected as a result of the provisional RCEP safeguard measure. For greater certainty, the duration of any provisional RCEP safeguard measure shall be counted as part of the total period prescribed by subparagraph 1(b) of Article 7.5 (Scope and Duration of Transitional RCEP Safeguard Measures).
4. Paragraph 2 of Article 7.2 (Application of Transitional RCEP Safeguard Measures), paragraph 4 of Article 7.5 (Scope and Duration of Transitional RCEP Safeguard Measures), and paragraphs 1 and 2 of Article 7.10 (Other Provisions) shall apply, *mutatis mutandis*, to a provisional RCEP safeguard measure.

#### **Article 7.9: Global Safeguard Measures**

1. Nothing in this Agreement shall affect the rights and obligations of the Parties under Article XIX of GATT 1994 and the Safeguards Agreement.<sup>1</sup>
2. Unless otherwise provided in paragraph 3, nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.<sup>2</sup>

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<sup>1</sup> For greater certainty, each Party retains its rights and obligations under Article 5 of the Agreement on Agriculture in view of Article 20.2 (Relation to Other Agreements).

<sup>2</sup> For greater certainty, each Party retains its rights and obligations under Article 5 of the Agreement on Agriculture in view of Article 20.2 (Relation to Other Agreements).



3. On request of another 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 paragraphs 1, 2, and 4 of Article 12 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.
4. No Party shall apply, with respect to the same good, at the same time:
  - (a) a provisional or transitional RCEP 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 RCEP safeguard measures.
2. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures relating to transitional RCEP safeguard measures.
3. A written notice referred to in paragraph 1 of Article 7.3 (Notification and Consultation), paragraph 3 of Article 7.7 (Compensation), and paragraph 2 of Article 7.8 (Provisional RCEP Safeguard Measures) 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<sup>3</sup> 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 to the respondent 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

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<sup>3</sup> For the purposes of this paragraph, "respondent" means a producer, manufacturer, exporter, 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.

- (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.

#### **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 another 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 another 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 Parties 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 to the other Party to comment and submit additional information or documents, as appropriate and in conformity with the procedural rules provided for in the laws and regulations of the former Party.

### **Article 7.13: Prohibition of Zeroing**

When margins of dumping are established, assessed, or reviewed under Article 2, paragraphs 3 and 5 of Article 9, and Article 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 subparagraph 4.2 of Article 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 paragraph 5 of Article 6 of the AD Agreement and paragraph 4 of Article 12 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 subparagraph 5.1 of Article 6 of the AD Agreement. The non-confidential summaries referred to in subparagraph 5.1 of Article 6 of the AD 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 paragraph 2 of Article 6 of the AD Agreement.

### **Article 7.16: Non-Application of Dispute Settlement**

No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Section or Annex 7A (Practices Relating to Anti-Dumping and Countervailing Duty

Proceedings). The applicability of dispute settlement to this Section will be subject to review in accordance with Article 20.8 (General Review).