

CHAPTER SEVEN TRADE REMEDIES

Section A: Scope

Article 7.1: Scope

1. This Chapter shall apply to investigations and measures that are taken under each Party's competent authority.
2. For purposes of this Chapter, **competent authority** means:
 - (a) for Korea, the Korea Trade Commission, or its successor; and
 - (b) for the UAE, the Ministry of Economy, or its successor.

Section B: Anti-Dumping and Countervailing Measures

Article 7.2: General Provisions

1. The Parties reaffirm their rights and obligations under Articles VI and XVI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.
2. The Parties recognize the right to apply measures consistent with Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement, and the importance of promoting transparency.
3. Except as otherwise stipulated in this Article, this Agreement does not confer any additional rights or obligations on the Parties with regard to anti-dumping and countervailing measures, including the initiation and conduct of anti-dumping and countervailing duty investigations as well as the application of anti-dumping and/or countervailing measures.
4. Each Party's competent authority shall ensure, before a final determination is made, the disclosure of all essential facts under consideration which form the basis for the decision whether to apply definitive measures. This is 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.

Article 7.3: Notification and Consultation

1. When a Party's competent authority receives a written application by or on behalf of its domestic industry for the initiation of an anti-dumping investigation in respect of a good from the other Party, the receiving Party shall notify the other Party of the application as far in advance of the initiation of such investigation as possible.

2. As soon as possible after accepting an application for a countervailing duty investigation in respect of a good imported from the other Party, and in any event before initiating an investigation, the Party shall provide a written notification of its receipt of the application to the other Party and invite the other Party for consultations with the aim of clarifying the situation as to the matters referred to in the application and arriving at a mutually agreed solution.

3. Interested parties should be granted the right to express their views during anti-dumping and anti-subsidy investigations in accordance with each Party's domestic law.

4. The Party whose goods are subject to anti-dumping or countervailing measures imposed by the other Party has the right to request consultations in order to discuss the impact of these measures on bilateral trade.

Article 7.4: Lesser Duty Rule

Should a Party decide to impose a provisional or definitive anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or amount of the countervailable subsidy, but it may be less than that margin if, pursuant to the Party's domestic law, such a lesser duty would be adequate to remove the injury to the domestic industry.

Article 7.5: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter Fifteen (Dispute Settlement) of this Agreement for any matter arising under this Section.

Section C: Bilateral Safeguard Measures

Article 7.6: Definitions

For purposes of this Section:

bilateral safeguard measure means a bilateral safeguard measure applied within a transition period and as described in Article 7.7;

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

provisional measure means a provisional bilateral safeguard measure described in Article 7.10;

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 five years from the date of completion of tariff reduction or elimination in accordance with each Party's Schedule in Annex 2-A (Reduction or Elimination of Customs Duties).

Article 7.7: Application of Bilateral Safeguard Measures

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of a Party is 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 serious injury or threat thereof to a domestic industry producing a like or directly competitive good, the other Party may, to the extent necessary to prevent or remedy the serious injury, apply a bilateral safeguard measure consisting of:

- (a) the suspension of the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) an increase of the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the most-favored-nation (hereinafter referred to as “MFN”) applied rate of customs duty on the good in effect on the date on which the bilateral safeguard measure is taken; or
 - (ii) the MFN applied rate of customs duty on the good in effect on the day immediately preceding the date this Agreement comes into force.

Article 7.8: Notification and Consultation

1. A Party shall immediately notify the other Party in writing upon:
 - (a) initiation of an investigation described in Article 7.9:
 - (b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty on the good pursuant to this Agreement; and
 - (c) taking a decision to apply or extend a provisional or final bilateral safeguard measure.
2. A Party shall consult with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the non-confidential version of the information arising from the investigation and exchanging views on the measure.

Article 7.9: Conditions and Limitations

1. A Party shall apply a bilateral 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*.

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 authorities complete any such investigation within one year of its date of initiation.

4. Neither Party shall 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 authorities of the importing Party determine, in conformity with the procedures specified in this Section, 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; or
- (c) beyond the expiration of the transition period, except with the consent of the other Party.

5. No bilateral safeguard measure shall be applied again to the import of a good which has been previously subject to such measure for a period of time equal to the period during which the previous measure was applied.

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

7. When a Party terminates a bilateral safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule in Annex 2-A (Reduction or Elimination of Customs Duties), would have been in effect but for the measure.

Article 7.10: 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 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 have caused serious injury or threat thereof to the domestic industry.
2. Before applying a bilateral safeguard measure on a provisional basis, the applying Party shall notify the other Party. A Party may not apply a provisional measure until at least 45 days after the date its competent authorities initiate an investigation.
3. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 7.9.1 and 7.9.2.
4. The Party shall promptly refund any tariff increases if the investigation described in Article 7.9 does not result in a finding that the requirements of Article 7.7 are met. The duration of any provisional measure shall be counted as part of the period described in Article 7.9.4(b).

Article 7.11: 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 bilateral safeguard 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. The Party exercising the right of suspension may suspend the application of concessions only for the minimum period necessary to achieve the substantially equivalent effects.

3. A Party against whose good the bilateral safeguard measure is applied shall notify the Party applying the bilateral safeguard measure in writing within a reasonable period of time before it suspends concessions in accordance with paragraph 2.

4. The right of suspension referred in paragraph 2 shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and conforms to the provisions of this Agreement.

5. 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.

Section D: Global Safeguard Measures

Article 7.12: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement, including Article 9 of the Safeguards Agreement. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement.

2. Neither Party shall apply, with respect to the same good, at the same time:

(a) a bilateral safeguard measure as applied in Section C; and

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

3. Where, as a result of a global safeguard measure, a safeguard duty is imposed, the margin of preference, in accordance with the Party's Schedule in Annex 2-A (Reduction or Elimination of Customs Duties), shall be maintained.

4. At the request of the other Party, and provided that it has a substantial interest, the Party intending to take safeguard measures shall provide immediately written notification of all pertinent information on the initiation of the safeguard

investigation, including the provisional findings and the final findings of the investigation, as well as offer the possibility for consultations to the other Party.

5. For purposes of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the good under investigation during the most recent three-year period of time, measured in terms of either absolute volume or value.

Article 7.13: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter Fifteen (Dispute Settlement) of this Agreement for any matter arising under this Section.

Section E: Cooperation on Trade Remedies

Article 7.14: Cooperation on Trade Remedies

The Parties shall endeavor to encourage cooperation on trade remedies between the relevant authorities of each Party who have responsibility for trade remedy matters.