

CHAPTER SEVEN

TRADE REMEDIES

Section A: Bilateral Safeguard Measures

Article 7.1: Definitions

For purposes of this Section:

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 producers whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

bilateral safeguard measure means a measure described in Article 7.2;

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.

Article 7.2: Application of a Bilateral Safeguard Measure

1. 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 constitute a substantial cause of serious injury, or threat thereof, to the domestic industry producing a like or directly competitive good, the importing Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under 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-favored-nation (MFN) applied rate of customs duty on the good in effect at the time the bilateral safeguard measure is taken; and
 - (ii) the MFN applied rate of customs duty on the good in effect on the day immediately preceding the date this Agreement enters into force.

Article 7.3: Investigation Procedures

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. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 1 and shall consult with the other Party as far in advance as practicable prior to applying a bilateral safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.
3. 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*.
4. Each Party shall ensure that its competent authorities complete any such investigation within one year of its date of initiation.

Article 7.4: Conditions and Limitations

1. 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 Article 7.3, 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;

- (c) beyond the expiration of the transition period, except with the consent of the other Party; or
- (d) more than once against the same good.

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

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

Article 7.5: 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 constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2. The applying Party shall notify the other Party before applying a bilateral safeguard measure on a provisional basis, and shall initiate consultations after applying the measure.

3. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 7.3.1 and 7.3.3.

4. The Party shall promptly refund any tariff increases if the investigation described in Article 7.3.1 does not result in a finding that the requirements of Article 7.2 are met. The duration of any provisional measure shall be counted as part of the period described in Article 7.4.1(b).

Article 7.6: 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 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.
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 bilateral safeguard measure terminates.
4. Any compensation shall be based on the total period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

Article 7.7: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. Unless otherwise provided in this Article, this Agreement shall not confer any additional rights or impose any 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. Neither Party shall apply, with respect to the same good, at the same time:
 - (a) a provisional bilateral safeguard measure or bilateral safeguard measure; and
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Section B: Anti-Dumping and Countervailing Duties

Article 7.8: General Provisions

1. Except as otherwise provided for in this Chapter, the Parties maintain their rights and obligations under the Article VI of GATT 1994, the Anti-Dumping Agreement and the SCM Agreement.

2. The Parties shall ensure, 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 whether on the weighted-to-weighted basis, transaction-to-transaction basis, or weighted-to-transaction basis under Article 2.4.2 of the Anti-Dumping Agreement, all individual margins, whether positive or negative, should be counted toward the average; and
- (b) 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 7.9: Notification and Consultation

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

Article 7.10: Application of Dispute Settlement Provisions

Except for Articles 7.1 through 7.6 and Article 7.7.2, neither Party shall have recourse to Chapter 16 (Dispute Settlement) for any matter arising under this chapter. For Articles 7.1 through 7.6 and Article 7.7.2, a Party shall have recourse only to Article 16.5 (Consultations), Article 16.6 (Referral to the Joint Committee), and Article 16.7 (Good Offices, Conciliation, or Mediation) of the Chapter 16 (Dispute Settlement).