

CHAPTER 5

TRADE REMEDIES

Section A: Global Safeguard Measures

Article 69: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.
2. No Party may apply, with respect to the same product, at the same time:
 - (a) a bilateral safeguard measure; and
 - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Section B: Bilateral Safeguard Measures

Article 70: Imposition of a Safeguard Measure

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, or as a result of unforeseen developments in conjunction with the existence of a preferential tariff under this Agreement, an originating product is being imported into the Party's territory 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 a domestic industry producing a like or directly competitive product.
2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:
 - (a) suspend the further reduction of any rate of duty provided for under this Agreement on the product; or
 - (b) increase the rate of duty on the product to a level not to exceed the lesser of:

- (i) the most-favoured-nation applied rate of duty in effect at the time the measure is applied; and
- (ii) the base tariff rate as provided in the schedule to Annex 2 (Tariff Elimination).²

Article 71: Standards for a Safeguard Measure

1. No Party may maintain 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 2 years; except that the period may be extended by up to one year if the competent authorities determine, in conformity with the procedures set out in Article 72 (Investigation Procedures and Transparency Requirements), that the safeguard 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; or
 - (c) beyond the expiration of the transition period.
2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
3. On the termination of a safeguard measure, the rate of duty shall be the customs duty set out in the Party's Schedule to Annex 2 (Tariff Elimination) as if the safeguard measure had never been applied.

Article 72: Investigation Procedures and Transparency Requirements

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authority 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 part of this Agreement, *mutatis mutandis*.
2. In determining whether increased imports of an originating product of the other Party have caused serious injury or are threatening to cause serious injury to a domestic industry, the competent authority of the importing Party shall follow the rules in Article

² The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

4.2(a) and Article 4.2(b) of the Safeguards Agreement; and to this end, Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 73: Provisional Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that the increased imports have caused or are threatening to cause serious injury to a domestic industry.

2. The duration of the provisional safeguard measure may not exceed 180 days and will adopt any of the forms set out in paragraph 2 of Article 70 (Imposition of a Safeguard Measure) of this Section during which the pertinent requirements of Article 70 (Imposition of a Safeguard Measure) and Article 72 (Investigation Procedures and Transparency Requirements) shall be met. The guarantees or the received funds arising from the imposition of a provisional safeguard measure shall be promptly liberated or refunded, as it corresponds, when the investigation does not determine that increased imports have caused or threaten to cause serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the period of a safeguard measure.

Article 74: Notification and Consultations

1. A Party shall promptly notify the other Party, in writing, on:

- (a) initiating an investigation under this Section;
- (b) applying a provisional measure; and
- (c) taking a final decision on the application of a safeguard measure.

2. A Party shall provide to the other Party a copy of the report of its competent investigating authority required under paragraph 1 of Article 72 (Investigation Procedures and Transparency Requirements).

3. On request of a Party whose product is subject to a safeguard investigation under this Section, the Party conducting that investigation shall enter into consultations with the other Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority has issued in connection with the investigation.

4. Where a Party applies a provisional safeguard measure referred to in Article 73 (Provisional Safeguard Measures), on request of the other Party, consultations shall be initiated after applying such a provisional measure.

Article 75: Compensations

1. A Party applying a safeguard measure for an overall period beyond 2 years shall, in consultation with the other Party, provide mutually-agreed 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 during the period of extension of the measure beyond the aforementioned 2 years. The Party applying the safeguard measure shall provide opportunity for such consultations no later than 30 days after the decision to extend the measure. Such consultations shall take place prior to the effective date of the extension.

2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. The exporting Party shall notify the other Party in writing in the English language at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.

Article 76: Definitions

For purposes of this Section:

competent investigating authority means:

(a) for China, the Ministry of Commerce, or its successor; and

(b) for Peru, the Ministry of Foreign Trade and Tourism, or its successor;

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

safeguard measure means a measure described in paragraph 2 of Article 70 (Imposition of a Safeguard Measure);

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;

substantial cause means a cause which is important and not less than any other cause;

directly competitive product refers to the product which, having different physical characteristics and composition to those of the imported product, fulfills the same functions of the latter, satisfies the same needs, and is commercially substitutable;

like product refers to the identical product, that is, the product that is the same in all aspects as the imported product, or to another product which, in spite of not being the same in all aspects, has very like characteristics to those of the imported product;

terms will be computed in natural or calendar days, except as otherwise stated; and

transition period means 8 years for the products that eliminate all tariff from the entry into force of the Agreement; means 10 years for the products for which the tariff elimination period is between 5-8 years, according to Annex 2 (Tariff Elimination), as the case may be; and for the products for which the tariff elimination period is 10 years or more, transition period means the tariff elimination period for the product set out in Annex 2 (Tariff Elimination) plus 5 years.

Section C: Antidumping and Countervailing Measures

Article 77: Antidumping and Countervailing Measures

1. The Parties agree to abide fully by the provisions of the *WTO Agreement on Implementation of Article VI of the GATT 1994*, and the *WTO Agreement on Subsidies and Countervailing Measures*.

2. The Parties agree to observe the following practices in antidumping cases between them:

- (a) immediately following the receipt of a properly documented application from an industry in one Party for the initiation of an antidumping investigation in

respect of products from the other Party, the Party that has received the properly documented application shall immediately notify the other Party of the receipt of the application;

- (b) during any antidumping investigation involving the Parties, the Parties agree to conduct all notification letters between the Parties in English; and
- (c) a Party's investigating authority shall take due account of any difficulties experienced by one or more exporters of the other Party in supplying information requested and provide any assistance practicable; on request of an exporter of the other Party, a Party's investigating authority shall make available the timeframes, procedures and any documents necessary for the offering of an undertaking.

3. Without prejudice to the relevant provisions of *WTO Agreement on Implementation of Article VI of the GATT 1994* regarding notification at the initiation stage to the exporting member whose export product is under investigation, the competent investigating authority of a Party shall notify the other Party of such initiation of the investigation procedure and send the model questionnaire of the investigation for the exporter or producer concerned and the list of the main known exporters or producers to the other Party.

Upon the receipt of the notification and information mentioned in the previous paragraph, the Party may notify relevant trade or industry associations or disclose the information to other parties concerned in a timely manner by the publicly available means, and may provide relevant information to the other Party as early as practicable.

4. For purposes of this Section, investigating authority is:

- (a) for China, Ministry of Commerce, or its successor; and
- (b) for Peru, the National Institute of the Defense of the Competition and the Protection of Intellectual Property, or its successor.

Section D: Cooperation

Article 78: Cooperation

1. The Parties may establish a cooperation mechanism between the investigating authorities of each Party to ensure each Party has a clear understanding of the practices adopted by the other Party in trade remedies investigations.

2. For purposes of this Section, competent investigating authority is:
- (a) for China, the Ministry of Commerce, or its successor; and
 - (b) for Peru, the Ministry of Foreign Trade and Tourism, or its successor (for bilateral safeguard measures), and the National Institute of the Defense of the Competition and the Protection of Intellectual Property, or its successor (for antidumping and countervailing measures, and global safeguard measures).