

CHAPTER 7 TRADE REMEDIES

SECTION A General Provisions

Article 7.1 Definitions

For the purposes of this Chapter:

- (a) **Agreement on Safeguards** means the *Agreement on Safeguards*, in Annex 1A to the WTO Agreement;
- (b) **Agreement on Agriculture** means the *Agreement on Agriculture*, in Annex 1A to the WTO Agreement;
- (c) **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (d) **global safeguard measure** means a measure applied under Article XIX of GATT 1994, the Agreement on Safeguards, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement;
- (e) **provisional measure** means a provisional safeguard measure described in Article 7.11 (Provisional Safeguard Measures);
- (f) **safeguard measure** means a safeguard measure described in Article 7.10 (Scope and Duration of Safeguard Measures);
- (g) **serious injury** means a significant overall impairment in the position of a domestic industry;
- (h) **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
- (i) **transitional safeguard period** means, in relation to a particular good, the period from the entry into force of this Agreement until two years after the date on which the customs duty on that good is to be eliminated, or reduces to its final commitment, in accordance with that Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

Article 7.2

Anti-Dumping Measures

1. The rights and obligations of the Parties relating to application of anti-dumping measures shall be governed by Article VI of the GATT 1994 and the Anti-Dumping Agreement.
2. In order to enhance transparency:
 - (a) the Parties confirm their current practice of counting toward the average all individual margins, whether positive or negative, when anti-dumping margins are established on the weighted-to-weighted basis or transaction-to-transaction basis, or weighted-to-transaction basis, and share their expectation that such practice will continue; and
 - (b) the Party making a decision to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, will normally apply the 'lesser duty' rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

Article 7.3

Subsidies and Countervailing Measures

The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Article XVI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures.

Article 7.4

Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Agreement on Safeguards and the Agreement on Agriculture. This Agreement does not confer any additional rights or obligations on the Parties with regard to global safeguard measures.
2. A Party shall not apply a safeguard measure or provisional measure, as provided in Article 7.10 (Scope and Duration of Safeguard Measures) or Article 7.11 (Provisional Safeguard Measures) on a good that is subject to a global safeguard measure, nor shall a Party continue the imposition of a safeguard measure or provisional measure on a good that becomes subject to a global safeguard measure.
3. A Party considering the imposition of a global safeguard measure on an originating good of the other Party shall initiate consultations with that Party as far in advance of taking such measure as practicable.

Article 7.5 Cooperation

1. The Parties agree to cooperate to:
 - (a) enhance each Party's knowledge and understanding of the other Party's trade remedy laws, regulations, policies, and practices; and
 - (b) exchange information on issues relating to:
 - (i) anti-dumping, safeguards and subsidies and countervailing measures;
 - (ii) developments in the WTO and other relevant international forums; and
 - (iii) practices by the Parties' competent authorities in anti-dumping, safeguards and subsidies and countervailing investigations.
2. The Parties may discuss matters pertaining to this cooperation through the FTA Joint Commission or a subsidiary body established by it.

SECTION B Transitional Safeguard Measures

Article 7.6 Scope

This Section applies to safeguard measures adopted or maintained by a Party affecting trade in goods among the Parties during the transitional safeguard period.

Article 7.7 Application of a Safeguard Measure

During the transitional safeguard period, if, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of the other Party is being imported into a Party's territory 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 a domestic industry producing like or directly competitive goods, the Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure consisting of:

- (a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the originating good from the date on which the action to apply the safeguard measure is taken; or
- (b) an increase of the rate of customs duty on the originating good to a level not to exceed the lesser of:

- (i) the Most-Favoured-Nation (MFN) applied rate of customs duty in effect on the date on which the action to apply the safeguard measure is taken; 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.

Article 7.8 Investigation

1. A Party shall take a safeguard measure only following an investigation by that Party's competent authorities in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the Agreement on Safeguards, and to this end, Article 3 and Article 4.2 of the Agreement on Safeguards shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. Each Party shall ensure that its competent authorities complete any such investigation expeditiously and, in any event, within one year following the date of its initiation.

Article 7.9 Notification

1. A Party shall immediately notify the other Party, in writing, upon:

- (a) initiating an investigation under Article 7.8 (Investigation);
- (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 that originating good;
- (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
- (d) taking a decision to progressively liberalise an existing safeguard measure.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 7.8 (Investigation) immediately after it is available.

3. A notification as referred to in subparagraph 1(a) shall include:

- (a) the reason for the initiation of the investigation;
- (b) a precise description of an originating good subject to the investigation and its subheading or more detailed level of the tariff;
- (c) the period subject to the investigation; and

- (d) the date of initiation of the investigation.
4. Notifications as referred to in subparagraphs 1(b), (c) and (d) shall include:
- (a) a precise description of the originating good involved and its subheading or more detailed level of the tariff;
 - (b) evidence of serious injury or threat thereof caused by increased imports of the originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement;
 - (c) the details of the proposed safeguard measure; and
 - (d) the proposed date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided.

Upon request, the Party applying or extending a safeguard measure shall to the extent possible provide additional information as the other Party may consider necessary.

5. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information provided under paragraphs 2 and 4 arising from the investigation referred to in Article 7.8 (Investigation), exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 7.12 (Compensation).

6. Where a Party applies a provisional measure referred to in Article 7.11 (Provisional Safeguard Measures), on request of the other Party, consultations shall be initiated immediately after such application.

Article 7.10 **Scope and Duration of Safeguard Measures**

1. A Party may not 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 two years, except that the period may be extended by up to one year if the competent authorities of that Party determine, in conformity with the procedures referred to in Article 7.8 (Investigation), 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) for a period exceeding three years, including any extension.

2. Where the expected duration of the safeguard measure is over one year, the importing Party shall ensure that the safeguard measure is progressively liberalised at regular intervals during the period of application.
3. When a Party terminates a safeguard measure on a good, the rate of customs duty for that good shall be no higher than the rate that, according to Annex 1 (Schedules of Tariff Commitments), would have been in effect as if the safeguard measure had never been applied.
4. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate following the end of the transitional safeguard period for such good.
5. A Party may not impose a safeguard measure more than once on imports of any good.
6. A Party shall not apply a safeguard measure to an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance to Annex 1 (Schedules of Tariff Commitments).

Article 7.11 **Provisional Safeguard Measures**

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional measure, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good from the other Party have caused or are threatening to cause serious injury to a domestic industry.
2. The duration of such a provisional measure shall not exceed 200 days, during which time the relevant requirements of Article 7.1 (Definitions), Article 7.7 (Application of a Safeguard Measure), Article 7.8 (Investigation), Article 7.9 (Notification) and Article 7.10 (Scope and Duration of Safeguard Measures) shall be met. The duration of any provisional measure shall be counted as part of the initial period and any extension as referred to in Article 7.10 (Scope and Duration of Safeguard Measures).
3. Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 7.8 (Investigation) does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

Article 7.12 Compensation

1. A Party proposing to apply a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure. Such consultations shall begin within 30 days of the decision to apply the safeguard measure and, in accordance with Article 7.9 (Notification), shall take place prior to the application of the safeguard measure.
2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of the consultations, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The Party may suspend the concession only for the minimum period necessary to achieve the substantially equivalent effects and only while the safeguard measure is maintained.
3. The right of suspension provided for in paragraph 2 shall not be exercised for the first year that the safeguard measure is in effect, provided that the safeguard measure has been applied as the result of an absolute increase in imports and that such a measure conforms to this Section.
4. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.
5. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.