

CHAPTER 7 TRADE REMEDIES

ARTICLE 7.1 Definitions

For the purposes of this Chapter:

“Anti-Dumping Agreement” means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement.

“Safeguards Agreement” means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement.

“SCM Agreement” means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement.

ARTICLE 7.2 Anti-Dumping and Countervailing Measures

General:

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

Termination of Anti-dumping and Countervailing Duty Measures:

2.A. Where an anti-dumping or countervailing duty investigation in respect of goods from the other Party is terminated with a negative final determination, or pursuant to a review under Articles 11.2 and 11.3 of the Anti-Dumping Agreement and Articles 21.2 and 21.3 of the SCM Agreement, no anti-dumping or countervailing duty shall be imposed on the same goods during one (1) year after the termination of the previous investigation or measure, if that other Party is the only subject country involved.

2.B. Notwithstanding paragraph 2.A., the investigating authority of the importing Party may initiate an investigation in an exceptional case, provided that the authority is satisfied, on the basis of evidence available to it, that dumping or injury has recurred as a result of withdrawal of the duties and that initiation of such an investigation is necessary to prevent material injury or threat thereof to the domestic industry as a consequence of such dumped imports from the exporting Party.

Practices Relating to Anti-dumping and Countervailing Duty Proceedings:

3. The Parties recognise the following practices as promoting the goals of transparency and due process in anti-dumping and countervailing duty proceedings:

- (a) the importing Party shall not include the other Party among subject countries in anti-dumping investigations where products are merely transhipped¹ through the other Party;
- (b) upon receipt by a Party's investigating authority of a properly documented anti-dumping or countervailing duty application with respect to imports from the other Party, and no later than ten (10) days before initiating an investigation, the Party shall provide written notification of its receipt of the application to the other Party;
- (c) as soon as possible and no later than ten (10) days, after receiving the notification of the receipt of the application, the exporting Party may request pre-initiation consultations with the importing Party, with the aim of clarifying all possible concerns regarding the matters referred to in the application and arriving at a mutually agreed solution;
- (d) without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the Party's national laws;
- (e) in any proceeding in which the investigating authority determines to conduct an in-person verification of information that is provided by a respondent² and that is pertinent to the calculation of dumping margins or the level of a countervailable subsidy, the investigating authority shall promptly notify each respondent of its intent, and, in normal circumstances:
 - (i) provide to each respondent ten (10) days advance notice of the dates on which the authorities intend to conduct an in-person verification of the information;
 - (ii) five (5) days prior to an in-person verification, provide to the respondent a document that sets out the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation to be made available for review; and
 - (iii) after the verification is completed, prepare a written report describing the methods and procedures that it followed in

¹ For the purpose of this paragraph, "**transshipment**" means the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation.

² 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.

carrying out the verification and the results of the verification and make the report available to the concerned interested parties, in sufficient time for the interested parties to defend their interests in the segment of a proceeding;

- (f) if, in an anti-dumping or countervailing duty action that involves imports from the other Party, a Party's investigating authority determines that a timely response to a request for information does not comply with the request, the investigating authority shall inform the interested party that submitted the response of the nature of the deficiency and, to the extent practicable, in light of time limits established to complete the anti-dumping or countervailing duty action, provide the interested party with an opportunity to remedy or explain the deficiency. If that interested party submits further information in response to that deficiency and the investigating authority finds that the response is not satisfactory, or that the response is not submitted within the applicable time limits, and if the investigating authority disregards all or part of the original and subsequent responses, the investigating authority shall explain in the determination or other written document the reasons for disregarding the information;
- (g) before a final determination is made, the investigating authority shall inform the Parties participating in the investigation of the essential facts that form the basis of the decision whether to apply definitive measures. Subject to the protection of confidential information, the investigating authority may use any reasonable means to disclose the essential facts. Such disclosure shall be made in writing, and should take place within sufficient time for interested parties to defend their interests; and
- (h) the investigating authority shall provide an adequate and timely opportunity to the concerned interested parties to present arguments on the reports and disclosures.

ARTICLE 7.3 **Bilateral Safeguard Measures**

Definitions:

For the purposes of this Article:

“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;

“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

“bilateral safeguard measure” means a measure described in paragraph 1.

General:

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party 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 that the imports of such originating good from the other Party causes serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement;
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the most-favoured nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and
 - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date this Agreement enters into force.

2. The Parties agree that neither tariff rate quotas nor quantitative restrictions are permissible forms of bilateral safeguard measures.

3. The Parties agree that the bilateral safeguard measure will be permanent for the duration of this Agreement. Nonetheless, upon a request of either Party, the CTG may, not less than five (5) years after the date on which the elimination or reduction of the customs duty on all the goods is completed, discuss and review the implementation and operation of the bilateral safeguard measure.

Notification and Consultation:

4. A Party shall notify the other Party in writing or by electronic communication:

- (a) within seven (7) days of initiation of an investigation described in paragraph 8,
- (b) immediately upon making a finding of serious injury or threat thereof caused by increased imports; and
- (c) immediately upon application of provisional or a definitive bilateral safeguard measure or extending the measure.

5. In making the notification referred to in subparagraphs 4(b), and 4(c) the Party proposing to apply a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof

caused by the increased imports, precise description of the good involved and the proposed measure and expected duration.

6. A Party shall make a notification to the other Party upon making a finding of serious injury or threat thereof caused by increased imports. Consultations shall be initiated immediately after the measure is taken.

7. A Party proposing to apply a definitive safeguard measure shall provide adequate opportunity for prior consultations with the other Party as far in advance, of taking any such measure, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on the compensation set out in paragraph 21. The Parties shall in such consultations, review, *inter alia*, the information provided under paragraph 4, to determine:

- (a) compliance with this Article;
- (b) whether any proposed measure should be taken; and
- (c) the appropriateness of the proposed measure, including consideration of alternative measures.

Conditions and Limitations:

8. A Party shall apply a 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 form part of this Agreement, *mutatis mutandis*.

9. In the investigation described in paragraph 8, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and form part of this Agreement, *mutatis mutandis*.

10. Each Party shall ensure that its competent authorities complete any such investigation within eight (8) months of its date of initiation which may be extended up to one (1) year by the competent authority.

11. Neither Party may 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; or
- (b) for a period exceeding two (2) years, except that the period may be extended by up to two (2) years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Article, 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 four (4) years.

12. No bilateral safeguard measure shall be applied to the import of an originating good for a period of one (1) year from the date of commencement of tariff reduction or tariff elimination for that originating good provided for under this Agreement.

13. When a Party terminates a bilateral safeguard measure, the rate of customs duty for the originating good subject to that bilateral safeguard measure shall be the rate that, according to that Party's Schedule of Tariff Commitments in Annex 2A (for India) or Annex 2B (for the UAE), would have been in effect but for that bilateral safeguard measure.

14. No bilateral safeguard measure shall be applied again to the import of a product that has been previously subject to such measure for a period of time equal to the period during which the previous measure was applied or one (1) year since the expiry of such measure, whichever is longer.

15. Notwithstanding the provisions of paragraph 15, a safeguard measure with a duration of one hundred and eighty (180) days or less may be applied again to the import of a product if:

(a) at least one (1) year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the four (4) year period immediately preceding the date of introduction of the measure.

16. Where the expected duration of the bilateral safeguard measures is over one (1) year, the Party applying the bilateral safeguard measure shall progressively liberalise it at regular intervals during its period of application.

Provisional Measures:

17. 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.

18. If a Party's competent authorities make a preliminary determination, the Party shall make such determination available to interested parties, and shall provide interested parties at least fifteen (15) days to comment and submit their arguments with respect to such determinations.

19. The duration of any provisional measure shall not exceed two hundred (200) days, during which time the Party shall comply with the requirements of paragraphs 5, 6, 8 and 9.

20. The Party shall promptly refund any tariff increases if the investigation described in paragraph 6 does not result in a finding that the requirements of paragraph 1 are met. The duration of any provisional measure shall be counted as part of the period described in paragraph 11(b).

Compensation:

21. No later than thirty (30) days after it applies a bilateral safeguard measure, a Party shall afford an opportunity for the other Party to consult regarding appropriate trade liberalising 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.

22. If the Parties are unable to agree on compensation within thirty (30) days in the consultations, 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.

23. A Party against whose good the bilateral safeguard measure is applied shall notify the Party applying the bilateral safeguard measure in writing at least thirty (30) days before it suspends concessions in accordance with paragraph 22.

24. The right to take action to suspend the application of concessions referred to in the second sentence of paragraph 22 shall not be exercised for:

- (a) The first two (2) years that the measure is in effect; and
- (b) The first three (3) years during which the bilateral safeguard measure is in effect, where it has been extended beyond two (2) years, provided that the measure has been taken as a result of an absolute increase in imports and that such measure conforms to the provisions of this Section.

25. The applying Party's obligation to provide compensation under paragraph 21 and the other Party's right to suspend concessions under paragraph 22 shall cease on the termination of the bilateral safeguard measure.

ARTICLE 7.4
Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of the 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 cause of serious injury or threat thereof.

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

- (a) a bilateral safeguard measure as provided in Article 7.3 (Bilateral Safeguard Measures); and
- (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement

ARTICLE 7.5
Subcommittee on Trade Remedies

The Parties agree to establish a Subcommittee on Trade Remedies (TR Committee) under the CTG, consisting of government representatives of each Party's competent authorities.