

CHAPTER SEVEN

TRADE REMEDIES

Section A – Safeguard Measures

Article 7.1: Article XIX of the GATT 1994 and the Safeguards Agreement

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994, the Safeguards Agreement, and any successor agreements. This Agreement does not confer additional rights or obligations on the Parties with regard to measures taken pursuant to 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 from such measure if those imports are not a substantial cause of serious injury or threat thereof.

2. A Party shall not apply or maintain, with respect to the same good, at the same time:

- (a) a bilateral safeguard measure; and
- (b) a measure pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement.

Article 7.2: Bilateral Safeguard Measures

1. Subject to paragraph 2, if a good originating in the territory of a Party, as a result of the reduction or elimination of a customs duty provided for under this Agreement, is being imported into the territory of the other Party in such increased quantities and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury:

- (a) suspend the further reduction of a rate of customs duty provided for under this Agreement on the good;

- (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 customs duty in effect at the time the safeguard measure is taken; and
 - (ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of customs duty to a level that, for each season, does not exceed the lesser of:
 - (i) the MFN applied rate of customs duty on the good in effect for the corresponding season immediately preceding the date of application of the safeguard measure; and
 - (ii) the MFN applied rate of customs duty on the good in effect for the corresponding season immediately preceding the date of entry into force of this Agreement.

2. The following conditions and limitations apply to a proceeding that may result in the application of a safeguard measure pursuant to paragraph 1:

- (a) A Party shall, without delay, deliver to the other Party written notice of, and a request for consultations regarding, the initiation of a proceeding that could result in the application of a safeguard measure against a good originating in the territory of the other Party;
- (b) Each Party shall ensure that its competent investigating authority completes any such investigation within one year of the date of initiation of the proceeding. A Party shall apply any such safeguard measure no later than one year after the date of initiation of the proceeding, unless the Parties agree otherwise;

- (c) A Party shall not maintain a safeguard measure for a period exceeding two years, except that the period may be extended by up to two years if the competent authority determines, in conformity with the procedures set out in paragraphs 1 and 2, and Article 7.3, 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. The total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years; and
 - (d) On the termination of the safeguard measure, the rate of customs duty shall be the rate that, according to that Party's Schedule to Annex 2-D (Tariff Elimination) for the staged elimination of the customs duty, would have been in effect but for the safeguard measure.
- 3.
 - (a) No later than 30 days after a Party applies a safeguard measure, that 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 customs duties expected to result from the measure. The Party applying the safeguard measure (hereinafter referred to as the "applying Party") shall provide such compensation as mutually agreed between the Parties.
 - (b) 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 safeguard measure.
 - (c) The applying Party's obligation to provide compensation pursuant to subparagraph (a) and the other Party's right to suspend concessions pursuant to subparagraph (b) shall terminate on the date the safeguard measure terminates.
- 4. The right of suspension referred to in paragraph 3 shall not be exercised for the first 24 months during which a safeguard measure is in effect, provided that the safeguard measure conforms to the provisions of this Agreement.

Article 7.3: Provisional Safeguard Measures

1. In critical circumstances, if delay would cause damage that would be difficult to repair, a Party may apply a safeguard measure on a provisional basis pursuant to a preliminary determination by its competent investigating authority that there is clear evidence that imports of an originating good from the other Party have increased as a result of the reduction or elimination of a customs duty under this Agreement, and that those imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.
2. Before a Party's competent investigating authority may make a preliminary determination, that Party shall publish a public notice in its official journal setting forth how interested parties, including importers and exporters, may obtain a non-confidential copy of the application requesting a provisional safeguard measure, and shall provide interested parties with at least 20 days after the date the Party publishes the notice to submit evidence and views regarding the application of a provisional safeguard measure. A Party shall not apply a provisional safeguard measure until at least 45 days after the date its competent investigating authority initiates an investigation.
3. The duration of any provisional safeguard measure shall not exceed 200 days, during which time the applying Party shall comply with the requirements of Article 7.5.4.
4. The applying Party shall promptly refund any customs duty increases if the investigation described in Article 7.5.4 does not result in a finding that the requirements of Article 7.2.1 are met. The duration of any provisional safeguard measure shall be counted as part of the period described in Article 7.2.2(c).

Article 7.4: Application of Safeguard Measures

A safeguard measure with respect to a good may only be applied during the transition period for that good.

Article 7.5: Administration of Safeguard Measures

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws, regulations, decisions, and rulings governing all safeguard measures.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in safeguard measure proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by its domestic law. Negative injury determinations are not subject to modification, except by such review. Each Party shall provide the competent investigating authority empowered under its domestic law to conduct those proceedings with the necessary resources to enable that Party to fulfil its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures for safeguard measure proceedings, in accordance with the requirements set out in paragraph 4.

4. A Party may apply a safeguard measure only following an investigation by the Party's competent investigating authority in accordance with Articles 3 and 4.2 of the Safeguards Agreement. To this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 7.6: Dispute Settlement in Safeguard Measures Matters

A Party shall not request the establishment of a panel under Article 21.6 (Establishment of a Panel) regarding proposed safeguard measures.

Section B – Antidumping and Countervailing Duties

Article 7.7: Antidumping and Countervailing Duties

Relation to Other Agreements

1. (a) Except as provided in this Article, in respect of the application of antidumping and countervailing measures the Parties maintain their rights and obligations under the WTO Agreement, and disputes regarding any matter relating to those rights and obligations shall be settled under the WTO Agreement.

- (b) Except for paragraphs 2 and 4, this Agreement is not to be construed to impose rights or obligations on a Party with respect to antidumping or countervailing measures. A Party shall not have recourse to dispute settlement under this Agreement for a matter arising under this Article.¹

Notification and Consultation

2. Upon receipt by a Party's competent authority of a properly documented antidumping or countervailing duty application in respect of imports from the other Party, and before initiating an investigation, that 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 opportunity regarding the application, consistent with that Party's domestic law.

Lesser duty

3. (a) The Parties recognise the desirability of providing for the possibility of imposing antidumping or countervailing duties that are less than the full margin of dumping or amount of subsidy.
- (b) In this regard:
- (i) Korea shall apply its relevant domestic laws and regulations; and
- (ii) Canada shall consider information provided in accordance with its domestic law as to whether imposing an antidumping or countervailing duty would not be in the public interest. After considering this information, the competent authority may consider whether the amount of the antidumping or countervailing duty to be imposed shall be the full margin of dumping or amount of subsidy, or a lesser amount that would be adequate to remove the injury to the domestic industry, in accordance with the domestic law of Canada.

¹ Although recourse to dispute settlement is not available with respect to paragraphs 2 and 4, the Parties affirm that those paragraphs create binding rights and obligations.

Undertakings

4. (a) After the competent authority of a Party initiates an antidumping or countervailing duty investigation, that Party shall transmit to the other Party's embassy or competent authority written information regarding the Party's laws and procedures for requesting consideration by its authorities of an undertaking as described in the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* or the *WTO Agreement on Subsidies and Countervailing Measures*, including the time frames for offering and concluding any such undertaking.
- (b) In an antidumping or countervailing duty investigation, where a Party's authority has made a preliminary affirmative determination of dumping or subsidisation and injury caused by that dumping or subsidisation, that Party shall afford due consideration, and adequate opportunity for consultations, to exporters of the other Party regarding proposed undertakings which, if accepted, may result in suspension of the investigation without imposition of antidumping or countervailing duties, through the means provided for in the Party's domestic laws and procedures.

Section C – Committee on Trade Remedies

Article 7.8: Committee on Trade Remedies

1. The Parties hereby establish a Committee on Trade Remedies, composed of representatives at an appropriate level from relevant agencies of each Party who have responsibility for trade remedies matters, including antidumping, subsidies and countervailing measures, and safeguards issues.
2. The functions of the Committee, which operates on the basis of consensus in respect of all matters, are to:
 - (a) enhance each Party's knowledge and understanding of the other's domestic trade remedy laws, policies, and practices;

- (b) oversee implementation of this Chapter, including compliance with Articles 7.7.2 and 7.7.4;
- (c) improve cooperation between the Parties' agencies having responsibility for trade remedies matters;
- (d) provide a forum for the Parties to exchange information on issues relating to trade remedies matters;
- (e) establish and oversee the development of educational programs related to the administration of trade remedy law for officials of both Parties; and
- (f) provide a forum for the Parties to discuss other relevant topics of mutual interest, including:
 - (i) international issues relating to trade remedies, including issues relating to international trade negotiations; and
 - (ii) practices by the Parties' competent authorities in antidumping and countervailing duty investigations, such as the application of "facts available" and verification procedures.

3. The Committee shall meet at least once a year and may meet more frequently as agreed by the Parties.

Section D – Definitions

Article 7.9: Definitions

For the purposes of this Chapter:

competent investigating authority means:

- (a) for Canada, the Canadian International Trade Tribunal; and
- (b) for Korea, the Korea Trade Commission,

or their respective successors;

domestic industry means the producers as a whole of the like or directly competitive good operating in the territory of a Party or producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of those goods;

safeguard measure means a measure described in Article 7.2;

serious injury means a significant overall impairment of a domestic industry;

substantial cause means a cause that is important and not less important 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 period beginning on the date of entry into force of this Agreement and ending on the date that is the earliest of:

- (a) 10 years after the end of the tariff elimination period for that good; or
- (b) 15 years after the entry into force of this Agreement.