

## **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

- (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

### **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.



- (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.<sup>1</sup>

*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.

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<sup>1</sup> 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

- (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

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;



