

## CHAPTER 7

### TRADE REMEDIES

#### Section A: General Trade Remedies

##### Article 63: Anti-dumping and Countervailing Measures

1. Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and the *WTO Agreement on Subsidies and Countervailing Measures*.
2. No Party shall use a methodology based on surrogate value of a third country or region for the purpose of determining normal value when calculating dumping margin in an anti-dumping investigation.

##### Article 64: Global Safeguard Measures

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.

#### Section B: Bilateral Safeguard Measures

##### Article 65: Definitions

For the purposes of this Chapter:

**competent authority** means,

- (a) for China, the Ministry of Commerce, or its successor; and
- (b) for Maldives, the Ministry of Economic Development, or its successor;

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

**Safeguards Agreement** means the *Agreement on Safeguards*, which is part of the WTO Agreement;

**safeguard measure** means a measure described in Article 66;

**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

**transition period** means in relation to a particular product, the 5 year period from the entry into force of this Agreement, except that for any product for which the date on which the customs duty on that product is to be eliminated in accordance with Annex 1 is more than 5 years, transition period shall mean the tariff elimination period for that good.

#### **Article 66: Application of a Bilateral Safeguard Measure**

1. During the transition period only, if as a result of the reduction or elimination of a customs duty provided for in this Agreement, an originating product benefiting from preferential tariff treatment under this Agreement 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 as to cause or threaten to cause serious injury to domestic industry producing a like or directly competitive product, the importing Party may apply a safeguard measure described in paragraph 2.

2. If the conditions in paragraph 1 are met, a Party may:

(a) suspend the further reduction of any rate of customs duty on the product provided for in this Agreement; or

(b) increase the rate of customs duty on the product to a level not exceeding the lesser of:

(i) the MFN applied rate of duty in effect on the product on the day immediately preceding the date of entry into force of this Agreement; or

(ii) the MFN applied rate of customs duty in effect on the product on the date on which the safeguard measure is applied.

## **Article 67: Scope and Duration of Bilateral Safeguard Measures**

1. No Party may apply or 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; or
  - (b) for a period exceeding 2 years; except that the period may be extended by up to 1 year, if the competent authorities determine, in conformity with the procedures set out in this Chapter, 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. Regardless of its duration, such measure shall terminate at the end of the transition period.
2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over 1 year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
3. No bilateral safeguard measure may be applied more than once on the same product.
4. No Party may apply a safeguard measure on a product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and no Party may maintain a safeguard measure on a product that becomes subject to a measure that the Party imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.
5. On the termination of a safeguard measure, the Party that applied the safeguard measure shall apply the rate of customs duty set out in its schedule to Annex 1 on the date of termination as if the safeguard measure has never been applied.

## **Article 68: Investigation Procedures and Transparency Requirements**

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the Safeguards Agreement; and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Each Party shall ensure that its competent authorities complete any such investigation within 1 year after its initiation.

## **Article 69: Provisional Measures**

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to a domestic industry.
2. Before taking a provisional measure, the applying Party shall notify the other Party and shall, on request of the other Party, initiate consultations after applying such a measure.
3. The duration of a provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Articles 66 through 68 shall be met. Such a provisional safeguard measure shall take the form of a suspension of the further reduction of any rate of duty provided for in this Agreement on the product or an increase in the customs duties not exceeding the lesser of the rates in Article 66.2(b). Any additional customs duties or guarantees collected shall be promptly refunded if the subsequent investigation referred to in Article 68.1 determines that increased imports have not caused or threatened to cause serious injury to a domestic industry.
4. The duration of any such provisional safeguard measure shall be counted as part of the initial period and any extension of a safeguard measures.

## **Article 70: Notification and Consultation**

1. A Party shall immediately notify the other Party, in writing on:
  - (a) initiating a safeguard investigation;
  - (b) making a finding of serious injury or threat thereof caused by increased imports;
  - (c) taking a decision to apply or extend a safeguard measure; and
  - (d) taking a decision to liberalize a safeguard measure previously applied, in accordance with Article 67.2.
2. In making the notification referred to in paragraphs 1(b) and 1(c), the Party applying a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, the proposed safeguard measure, the grounds for introducing such a safeguard measure, the

proposed date of introduction and its expected duration and timetable for progressive liberalization. In the case of an extension of a safeguard measure, the written results of the determination required by Article 68, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting shall also be provided.

3. 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, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 71.1.

4. A party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 68 as soon as it is available.

#### **Article 71: Compensation**

1. A party applying a safeguard measure shall, in consultation with the other Party, provide to the other Party 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. Such consultations shall begin within 30 days of the application of the safeguard measure.

2. If the Parties are unable to reach an agreement on compensation within 30 days after the consultation commences, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concession under paragraph 2.

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