

CHAPTER 7

TRADE REMEDIES

Section A: Bilateral Safeguard Measures

Article 7.1: 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 under this Agreement, any product originating in a Party is being imported into the territory of the other 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 bilateral 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 under this Agreement; or
 - (b) increase the rate of customs duty on the product to a level not exceeding the lesser of:
 - (i) the most-favored-nation (hereinafter referred to as “MFN”) applied rate of customs duty in effect on the product on the day immediately preceding the date of entry into force of this Agreement³; or
 - (ii) the MFN applied rate of customs duty in effect on the product on the date on which the measure is applied.

Article 7.2: Scope and Duration of Bilateral Safeguard Measures

- 1.. Neither Party may apply or maintain a bilateral safeguard measure:

³ The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of 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 years, except that the period may be extended by up to one year, if the competent authorities determine, in conformity with the procedures set out in Section A, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting.
 - (c) without prejudice of subparagraph (a) and (b), 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 bilateral safeguard measure is extended, the Party extending the measure shall liberalise at regular intervals.
 3. Neither Party may apply a safeguard measure more than once on the same product.
 4. On the termination of a bilateral safeguard measure, the Party that applied the bilateral safeguard measure shall apply the rate of customs duty set out in its schedule to Annex 2-A (Schedule of Tariff Commitments) of this Agreement on the date of termination as if the bilateral safeguard measure has never been applied.

Article 7.3: Investigation Procedures

Bilateral safeguard measure shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation by a competent authority of the Parties and in accordance with the related procedures laid down in the Agreement on Safeguards.

Article 7.4: Provisional Measure

1. In critical circumstances where delay would cause damage which it 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 requirement of Article 7.1, 7.2 and 7.3 shall be met. Such a provisional safeguard measure should take the form of a suspension of the further reduction of any rate of customs duty provided for under this Agreement on the product or an increase in the duties not exceeding the lesser of the rates in Article 7.1.2 (b). Any additional duties or guarantees collected shall be promptly refunded if the subsequent investigation referred to in Article 7.3 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 a part of the initial period and any extension of bilateral safeguard measure.

Article 7.5: Notification and Consultation

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

(a) initiating a bilateral 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 bilateral safeguard measure; and

(d) taking a decision to liberalise a bilateral safeguard measure previously applied, in accordance with Article 7.2.2.

2. In making the notification referred to in subparagraphs 1 (b) and 1 (c), the Party applying a bilateral 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 bilateral safeguard measure, the proposed date of introduction and its expected duration. In the case of an extension of a bilateral safeguard measure, the written results of the determination required by Article 7.3, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the domestic industry is adjusting shall also be provided.

3. A Party proposing to apply or extend a bilateral 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 of this Article, exchanging views on the bilateral safeguard measure and, in the case of extending a transitional safeguard measure reaching an agreement on compensation as set forth in Article 7.6.1.

4. A Party shall provide to the other Party a copy of the publicly available version of the report of its competent authorities in accordance with the Agreement on Safeguards as soon as it is available.

Article 7.6: Compensation

1. A Party extending a bilateral safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed 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 extension of the bilateral 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 extending the bilateral safeguard measure.

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

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

Article 7.7: Procedural Rules

For the application of bilateral safeguard measures, the competent authority shall comply with the provisions of this Section and in cases not covered by this Section, the competent authority may apply national procedural rules that are consistent with the Agreement on Safeguards.

Section B: Global Safeguards Measures

Article 7.8: General Provisions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards.
2. Neither Party may apply, with respect to the same good, during the same period:
 - (a) a bilateral safeguard measure pursuant to Article 7.1; and
 - (b) a measure under Article XIX of the GATT 1994 and the Agreement on Safeguards.

Section C: Antidumping and Countervailing Duties

Article 7.9: General Provisions

1. Except as otherwise provided by paragraph 3, each Party retains its rights and obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement.
2. Each Party retains its rights and obligations under the *Agreement on Subsidies and Countervailing Measures*, contained in Annex 1A to the WTO Agreement.
3. Neither Party shall use a methodology based on surrogate value of a third country for the purpose of determining normal value when calculating dumping margin in an anti-dumping investigation.

Article 7.10: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to Section B and C of this Chapter.

Section D: Definitions

Article 7.11: Definitions

For the purposes of this Chapter:

bilateral safeguard measure means a measure described in Article 7.1;

competent authority means:

- (a) for China, the Ministry of Commerce (*MOFCOM*) or its successor; and

(b) for Nicaragua, the Directorate for the Implementation and Negotiation of Trade Agreements of the Ministry of Development, Industry and Commerce (*Dirección de Aplicación y Negociación de Acuerdos Comerciales del Ministerio de Fomento, Industria y Comercio (MIFIC)*) or its successor;

domestic industry means, with respect to an imported good, the aggregate of producers of a like or directly competitive good operating in the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

global safeguard measure means a measure applied under Article XIX of GATT 1994 and the Agreement on Safeguards;

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

threat of serious injury means the clear imminence of serious injury based on facts and not merely on allegation, conjecture or remote possibility; and

transition period means the ten-year period following the date this Agreement enters into force, except that for any good for which the Schedule to Annex 2-A (Schedule of Tariff Commitments) of the Party applying the safeguard measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, transition period means the tariff elimination period for the good set out in that Schedule.