

## CHAPTER 7

### TRADE REMEDIES

#### Section A: Global Safeguard Measures

##### Article 7.1: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken in accordance with Article XIX of 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 substantial cause of serious injury or threat thereof.
3. A Party may not apply, with respect to the same good, at the same time:
  - (a) a bilateral safeguard measure; and
  - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

#### Section B: Bilateral Safeguard Measures

##### Article 7.2: Definitions

For the purposes of this Section:

**bilateral safeguard measure** means a measure described in Article 7.3.2 (Imposition of a Bilateral Safeguard Measures);

**competent authority** means:

- (a) for Indonesia, the Ministry of Trade; and
  - (b) for Peru, the Vice Ministry of Foreign Trade (*Viceministerio de Comercio Exterior - VMCE*);
- or their successors;

**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 such good;

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

**substantial cause** means a cause which is important and not less 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 10-year period following the date of entry into force of this Agreement, except that for any good for which the schedule set out in Annex 2-A (Schedules of Tariff Commitments) of the Party applying the bilateral safeguard measure provides for the Party to eliminate its customs duties on the good over a period of 10 years or more, transition period means the customs duty elimination period for the good set out in that schedule plus three years.

### **Article 7.3: Imposition of a Bilateral Safeguard Measure**

1. A Party may apply a measure set out in paragraph 2, during the transition period only, if, as a result of the reduction or elimination of a customs duty in accordance with this Agreement, an originating good of the other Party is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph 1 are met, a Party may take a bilateral safeguard measure which:

- (a) suspends the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increases the rate of customs duty on the good to a level not to exceed the lesser of:
  - (i) the most-favored-nation (MFN) applied rate of customs duty in effect at the time the measure is applied; or
  - (ii) the base rate of customs duty as provided in the schedule set out in Annex 2-A (Schedules of Tariff Commitments).<sup>1</sup>

3. A Party shall apply a bilateral safeguard measure to imports of an originating good irrespective of their source.

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<sup>1</sup> The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of a bilateral safeguard measure.

#### **Article 7.4: Standards for a Bilateral Safeguard Measure**

1. A Party may not apply a bilateral safeguard measure:
  - (a) except to the extent, and for the time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;
  - (b) for a period exceeding two years, except that the period may be extended by up to two years if the competent authority of the importing Party determines, in conformity with the procedures set out in Article 7.5 (Investigation Procedures and Transparency Requirements), that the 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) beyond the expiration of the transition period; or
  - (d) beyond the products set out in Annex 2-A (Schedules of Tariff Commitments).
2. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
3. Upon the termination of a bilateral safeguard measure, the Party that has applied the measure shall apply the rate of customs duty set out in the Party's schedule set out in Annex 2-A (Schedules of Tariff Commitments) as if the measure had never been applied.
4. A Party shall not apply a bilateral safeguard measure more than once on the same good until a period of time equal to the half of the duration of the previous bilateral safeguard measure, including any extension, has elapsed commencing from the termination of the previous bilateral safeguard measure, provided that the period of non-application is at least one year.

#### **Article 7.5: Investigation Procedures and Transparency Requirements**

1. A Party shall apply a bilateral safeguard measure only following an investigation by the Party's competent authority in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement. To this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Articles 4.2(a) and 4.2(b) of the Safeguards Agreement. To this end, Articles 4.2(a) and 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
3. Each Party shall ensure that its competent authority completes any such investigation within one year following its date of initiation.

## **Article 7.6: Provisional Bilateral Safeguard Measures**

1. In critical circumstances, where delay would cause damage that would be difficult to repair, a Party may apply a provisional bilateral safeguard measure pursuant to a preliminary determination by its competent authority that there is clear evidence that the increased imports of an originating good from the other Party, as the result of the reduction or elimination of a customs duty under this Agreement, constitute a substantial cause of serious injury, or threat thereof, to a domestic industry.
2. The duration of the provisional bilateral safeguard measure, taking any forms set out in Article 7.3 (Imposition of a Bilateral Safeguard Measure), shall not exceed 200 days, during which the pertinent requirements of Articles 7.3 (Imposition of a Bilateral Safeguard Measure) and 7.5 (Investigation Procedures and Transparency Requirements) shall be met. The guarantees or received funds arising from the imposition of a provisional bilateral safeguard measure shall be promptly liberated or refunded, as it corresponds, when the investigation does not determine that increased imports constitute a substantial cause of serious injury, or threat thereof, to a domestic industry. The duration of any such provisional bilateral safeguard measure shall be counted as part of the duration of a bilateral safeguard measure.

## **Article 7.7: Notification and Consultation**

1. A Party shall promptly notify the other Party in writing upon:
  - (a) initiating a bilateral safeguard proceeding under this Section;
  - (b) applying a provisional bilateral safeguard measure;
  - (c) making a finding of serious injury or threat thereof caused by increased imports under the conditions set out in Article 7.3.1 (Imposition of a Bilateral Safeguard Measure); and
  - (d) taking a final decision to apply or extend a bilateral safeguard measure.
2. A Party shall provide to the other Party a copy<sup>2</sup> of the public version of the report of its competent authority in accordance with Article 7.5.1 (Investigation Procedures and Transparency Requirements).
3. On request of a Party whose good is subject to a bilateral safeguard proceeding under this Section, the Party conducting that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1(b) and paragraph 1(c), or any public notice or report that the competent authority has issued in connection with the proceeding or to discuss a proposed decision to apply or extend a bilateral safeguard measure.
4. All notifications during any bilateral safeguard investigation shall be exchanged in English.

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<sup>2</sup> The documents shall be in searchable PDF format.

## **Article 7.8: Compensation**

1. No later than 30 days after making a finding of serious injury or threat of serious injury, the Party proposing to apply the measure shall provide an opportunity to the other Party to consult with it regarding appropriate 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. The Party applying the measure shall provide that compensation as the Parties may agree.
2. If the Parties are unable to reach an agreement on compensation within 30 days following the commencement of consultations, the affected Party may suspend the application of concessions with respect to originating goods of the Party applying the measure that have trade effects substantially equivalent to the measure no later than 90 days after the measure is applied.
3. The Party proposing a measure to suspend the application of concessions shall notify in writing and in English, which include information on the amount of substantially equivalent and list of affected products, to the other Party before its application.
4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the bilateral safeguard measure.

## **Section C: Anti-Dumping and Countervailing Measures**

### **Article 7.9: Definition**

For the purposes of this Section:

**investigating authority** means:

- (a) for Indonesia, the Ministry of Trade; and
- (b) for Peru, the National Institute of the Defense of Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual - INDECOP*);

or their successors.

### **Article 7.10: Anti-Dumping and Countervailing Measures**

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement regarding the application of anti-dumping and countervailing measures.

2. During any anti-dumping and countervailing duty investigation involving the Parties, the Parties shall exchange all notifications, exporter/producer questionnaires, and information requirements<sup>3</sup> in English<sup>4</sup>.

3. Upon receipt by a Party's investigating authority of a properly documented countervailing duty application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting to consult with its investigating authority regarding the application, as provided for in Article 13 of the SCM Agreement.

4. Where a Party's investigating authority conducts an anti-dumping or countervailing duty investigation with respect to imports from the other Party, in addition to the notifications in accordance with the relevant provisions of the AD Agreement and the SCM Agreement, and independently of the notifications provided directly to the known producers or exporters, it shall provide to the other Party written notification of the initiation of such investigation procedure, together with a copy of the exporter/producer questionnaire and the list of the known main exporters or producers.

5. The Party that received the notification in accordance with paragraph 4:

- (a) shall endeavor to inform the exporters or producers, or the relevant trade or industrial associations of the good under investigation, of the information received from the investigating authority of the other Party;
- (b) may collect responses of the exporters or producers to the questionnaire and send the collected responses to the investigating authority of the other Party by the due date specified in the questionnaire; and
- (c) on request of the other Party, a Party should afford an extension to respond a questionnaire no later than 30 days.

## **Section D: Cooperation Mechanisms on Trade Remedies**

### **Article 7.11: Cooperation Mechanisms on Trade Remedies**

1. The Parties should make the best efforts to establish cooperation mechanisms between the investigating authorities of each Party to promote a better understanding of their respective laws, their application and, in general, any aspect of trade policy regarding trade remedies matters by sharing information, knowledge, experiences, and best practices.

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<sup>3</sup> The parties concerned shall provide all documents and information required by the investigating authority through the exporter/producer questionnaires and information requirements in the investigating authority's official national language. The investigating authority shall accept translations of such documents and information, as long as the translator's identification and signature are included.

<sup>4</sup> The documents shall be in searchable PDF format.

2. The Parties may undertake cooperative activities through cooperation mechanisms on trade remedies matters that they consider appropriate, such as:

- (a) enhancing each Party's knowledge and understanding of the other Party's trade remedy laws, policies, and practices;
- (b) improving cooperation between the agencies of the Parties responsible for trade remedies matters; and
- (c) exchanging information on multilateral issues related to trade remedies, including those related to WTO negotiations such as disciplines with regard to anti-dumping and countervailing duty matters.