CHAPTER 7

TRADE REMEDIES

Section I: Global Safeguard Measures

Article 7.1: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX (Emergency Action on Imports of Particular Products) of GATT 1994 and the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "Safeguards Agreement") and any other relevant provision in the WTO Agreement.

2. Except as provided in paragraph 3, no provision of this Agreement including the Chapter 15 (Dispute Settlement) shall be construed as imposing any additional rights or obligations on the Parties with respect to actions taken pursuant to Article XIX (Emergency Action on Imports of Particular Products) of GATT 1994 and the Safeguards Agreement.

3. No Party may apply, with respect to the same good, at the same time:

(a) a bilateral safeguard measure;

(b) a measure under Article XIX (Emergency Action on Imports of Particular Products) of GATT 1994 and the Safeguards Agreement; and

(c) a measure under Article 5 (Special Safeguard Provisions) of the Agriculture Agreement.

Article 7.2: Competent Investigating Authority

For the purposes of this Section, the competent investigating authority is:

(a) in the case of 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* - INDECOPI), or its successor; and

(b) in the case of Thailand, the Department of Foreign Trade of the Ministry of Commerce, or its successor.

Section II: Bilateral Safeguard Measures

Article 7.3: Definitions

For the purposes of this Section:

competent investigating authority means:

(a) in the case of Peru, the Ministry of Foreign Trade and Tourism (*Ministerio de Comercio Exterior y Turismo* – MINCETUR), or its successor; and

(b) in the case of Thailand, the Department of Foreign Trade of the Ministry of Commerce, or its successor;

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;

provisional measure means a provisional safeguard measure described in Article 7.7 (Provisional Safeguard Measures);

safeguard measure means a transitional safeguard measure described in Article 7.4 (Application of a Transitional Safeguard Measure);

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 the seven year period beginning on the commencement of the tariff reduction of each product under this Agreement, except where the tariff elimination for the product against which action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that product.

Article 7.4: Application of a Transitional Safeguard Measure

1. A Party may apply a measure described in paragraph 2, during the transition period only, if, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, or as a result of unforeseen developments in conjunction with the existence of a preferential tariff under this Agreement, an originating good of the other Party is being imported into the territory of the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to substantially cause serious injury, or threaten to cause serious injury, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph 1 are met, a Party may, to the minimum extent necessary to prevent or remedy serious injury, or threat thereof, and to facilitate adjustment, apply a safeguard measure, consisting of:

(a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the good from the date on which the action to apply the safeguard measure is taken; or

(b) an increase of 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 on the date on which the action to apply the safeguard measure is taken; or

(ii) the base tariff rate as provided in the schedule to Annex 2-B (Schedules of Tariff Commitments).

Article 7.5: Scope and Duration of Transitional Safeguard Measures

1. A Party may apply a safeguard measure:

(a) only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment; and

(b) for an initial period of no longer than two years except that the period of a safeguard measure may be extended by up to one year, provided that the conditions of this Chapter, including the procedure set out in Article 7.6 (Investigation Procedures and Transparency Requirements); are met and that the safeguard measure continues to be applied to the minimum extent 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 a safeguard measure, including any extensions thereof, shall not exceed three years. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate at the end of the transition period for such good.

2. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the application of the measure established in paragraph 1.

3. A Party shall not apply a safeguard or provisional measure more than once on the same good until an equal period as the duration of the previous safeguard measure, including any extension, has elapsed since the date of the termination of the previous measure, provided that the period of non-application is at least one year.

4. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 2-B (Schedules of

Tariff Commitments) on the date of termination as if the safeguard measure had never been applied.

Article 7.6: Investigation Procedures and Transparency Requirements

1. A Party shall apply or extend a safeguard measure only following an investigation by its competent investigating authority in accordance with Articles 3 (Investigation) and 4.2(c) (Determination of Serious Injury or Threat Thereof) of the Safeguards Agreement, and to this end, Articles 3 (Investigation) and 4.2(c) (Determination of Serious Injury or Threat Thereof) 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 (b) (Determination of Serious Injury or Threat Thereof) of the Safeguards Agreement, and to this end, such provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

3. Each Party shall ensure that its competent authorities complete any such investigation within one year of its date of initiation.

Article 7.7: Provisional Safeguard Measures

1. In critical circumstances where delay would cause injury which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement or the unforeseen developments in conjunction with the existence of a preferential tariff under this Agreement, have caused or are threatening to cause serious injury to a domestic industry.

2. The duration of such a provisional measure shall not exceed 180 days, during which period the pertinent requirements of Articles 7.4 (Application of a Transitional Safeguard Measure), 7.5 (Scope and Duration of Transitional Safeguard Measures) and 7.6 (Investigation Procedures and Transparency Requirements) shall be met.

3. The duration of any such provisional measure shall be counted as part of the duration of a safeguard measure established in Article 7.5.1 (Scope and Duration of Transitional Safeguard Measures).

4. Any additional customs duties collected or guarantees arising from the imposition of a provisional measure shall be promptly refunded or liberated, as the case may be, if the investigation referred to in Article 7.6 (Investigation Procedures and Transparency Requirements) does not determine that increased imports of the originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

Article 7.8: Notification and Consultation

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

   (a) initiating an investigation under Article 7.6 (Investigation Procedures and Transparency Requirements);

   (b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty on the good pursuant to this Agreement or as a result of unforeseen developments in conjunction with the existence of a preferential tariff under this Agreement;

   (c) applying a provisional safeguard measure;

   (d) taking a decision to apply or extend a safeguard measure; and

   (e) the timetable for progressive liberalisation of the measure, if such timetable is applicable.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authority required under Article 7.6 (Investigation Procedures and Transparency Requirements); immediately as it is available. The Party extending the measure shall provide, in the public version of its report, evidence that the domestic industry concerned is adjusting.

3. On request of a Party whose good is subject to a safeguard proceeding or a safeguard measure under this Section, the other Party shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority has issued in connection with the proceeding or measure.

4. Where a Party applies a provisional measure referred to in Article 7.7 (Provisional Safeguard Measures), on request of the other Party, consultations shall be initiated immediately after such application.

5. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

6. During any safeguard investigation involving the Parties, the Parties agree to exchange all notification letters between them in the English language.

Article 7.9: Compensation

1. A Party extending a safeguard measure for an overall period beyond two years shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of substantially equivalent concessions during the period of extension of the measure beyond the aforementioned two years. Such consultations

shall begin within 30 days of the decision to extend the measure and shall take place prior to the extension.

2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party may suspend the application of substantially equivalent concessions to the trade of originating goods of the Party extending the safeguard measure.

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

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

Section III: Anti-dumping and Countervailing Measures

Article 7.10: Anti-dumping and Countervailing Measures

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing duties.

2. During any anti-dumping and countervailing duty investigation involving the Parties, the Parties agree to exchange all notification letters and exporters or the producers questionnaires with an English translation.

3. Where the competent investigating authority of a Party conducts an anti-dumping or countervailing measures investigation with respect to imports from the other Party, independently of the notifications conducted directly to the exporters or producers, the competent investigating authority of that Party shall notify the other Party of the initiation of such investigation procedure, together with a copy of the exporters or the producers questionnaire and the list of the main known exporters or producers.

4. For the purposes of this Section, competent investigating authorities are:

(a) in the case of Peru, the National Institute of the Defense of the Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* - INDECOPI), or its successor; and

(b) in the case of Thailand, the Department of Foreign Trade of the Ministry of Commerce, or its successor.

Section IV: Cooperation Mechanisms on Trade Remedies

Article 7.11: Cooperation Mechanisms on Trade Remedies

1. The Parties may establish cooperation mechanisms between the competent investigating authorities of each Party with the objective of sharing information and experiences regarding the understanding of their respective laws, their application and, in general, any aspect of trade policy regarding trade remedies matters including anti-dumping and countervailing measures, and safeguards issues.

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

(a) enhancing knowledge and understanding of each Party of the trade remedy laws, policies, and practices of the other Party;

(b) improving cooperation between their agencies having responsibility for trade remedies matters, including through technical assistance; and

(c) exchanging available non-confidential information on trade remedies investigations with respect to imports from or originating in third countries, other than the Parties.