

## **Chapter 8**

### **Trade Remedies**

#### **Part I**

#### **General Trade Remedies**

##### **Article 8.1: Anti-Dumping Measures**

1. Each Party retains its rights and obligations under Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of GATT 1994 with regard to the application of antidumping duties, or any amendments or provisions that supplement or replace them.
2. No provision of this Agreement, including the provisions of Chapter 14 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to anti-dumping measures.

##### **Article 8.2: Countervailing Measures**

1. Each Party retains its rights and obligations regarding countervailing measures<sup>4</sup> under Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, or any amendments or provisions that supplement or replace them.
2. No provision of this Agreement, including the provisions of Chapter 14 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to countervailing measures.

##### **Article 8.3: Global Safeguards**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards and any other relevant provisions in the WTO Agreement, or any amendments or provisions that supplement or replace them.
2. Except for the circumstance specified in Article 8.6.4, no provision of this Agreement, including the provisions of Chapter 14 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to global safeguard measures.

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<sup>4</sup> For greater certainty, countervailing measures and subsidies have the same meaning as defined in the WTO Agreement.

## PART II

### Bilateral Safeguards

#### Article 8.4: Definitions

For the purposes of this Part:

**domestic industry** means with respect to an imported good, the producers as a whole of the like or directly competitive good 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;

**preferential tariff rate** means the rate of customs duty for an imported good pursuant to Annex 3.4;

**provisional measure** means a provisional safeguard measure described in Article 8.8;

**safeguard measure** means a transitional safeguard measure described in Article 8.5;

**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 five (5) year period beginning on the date of entry into force of this Agreement, except in the case of a product where the liberalization process occurs over a longer period of time, the transition period shall be equal to the period in which such a product reaches zero tariff according to the Tariff Schedule as specified in Annex 3.4.

#### Article 8.5: Application of a Transitional Safeguard Measure

If, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of a Party is being imported into the other Party's territory 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 a domestic industry producing a like or directly competitive good, the other Party may, to the minimum extent necessary to prevent or remedy serious injury and 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 MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

#### **Article 8.6: Scope and Duration of Transitional Safeguard Measures**

1. A Party shall apply a safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two (2) years. The period of a safeguard measure may be extended by up to one (1) year provided that the conditions of this Chapter are met and that the safeguard measure continues to be applied to the minimum extent necessary to prevent or remedy serious injury 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 (3) 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. No new safeguard measure may be applied to a good after that date.

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

3. No safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a safeguard measure, for a period of time equal to the duration of the previous safeguard measure or one (1) year, whichever is longer.

4. A Party shall not apply a safeguard or provisional measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

5. 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 3.4 (Elimination of Customs Duties) on the date of termination as if the safeguard measure had never been applied.

#### **Article 8.7: Investigation**

1. A Party shall apply or extend a safeguard measure only following an investigation by the Party's competent authorities to examine the effect of increased imports of an originating good of the other Party on the domestic industry, as reflected in changes in such relevant economic variables as production, productivity, levels of sales, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which is necessarily decisive. When factors other than increased imports of an originating good of the other Party resulting from the reduction or elimination

of a customs duty pursuant to this Agreement are simultaneously causing injury to the domestic industry, such injury shall not be attributed to such increased imports.

2. An investigation under paragraph 1 shall only take place in accordance with Article 3 and 4.2 (c) of the WTO Agreement on Safeguards; and to this end Article 3 and 4.2 (c) are incorporated into and made a part of this Agreement, *mutatis mutandis*.

#### **Article 8.8: Provisional Measures**

1. In highly unusual and 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 have caused or are threatening to cause serious injury. The duration of such a provisional measure shall not exceed one hundred and fifty (150) days, during which period the pertinent requirements of Articles 8.5, 8.6, and 8.7 shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 8.6.1. Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 8.7 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 3.4 as if the provisional measure had never applied.

2. In determining whether such highly unusual and critical circumstances exist, a Party shall have regard to the rate of increase of imports of an originating good of the other Party, both in absolute and relative terms, and the overall level of the Party's imports of the good from the other Party as a share of total imports of the good, as a result of the reduction or elimination of a duty on the good pursuant to this Agreement.

#### **Article 8.9: Notification and Consultation**

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

- (a) initiating an investigation under Article 8.7;
- (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;
- (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
- (d) taking a decision to progressively liberalise a safeguard measure previously applied.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 8.7 immediately as it is available.

3. In making a notification pursuant to paragraph 1, the Party applying or extending a safeguard measure shall also provide evidence 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 pursuant to this Agreement, a precise description of the good involved, the details of the proposed measure including as appropriate the grounds for not selecting the measure described in Article 8.5 (a), the date of introduction, duration, and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall provide additional information as the other Party may consider necessary.

4. 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 3, exchanging views on the measure and reaching an agreement on compensation as set forth in Article 8.10.

5. Where a Party applies a provisional measure referred to in Article 8.8, on request of the other Party, consultations shall be initiated immediately after such application.

6. 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 juridical persons, public or private.

7. The Parties shall provide an English translation of notifications under this Article and any other communications between parties.

#### **Article 8.10: Compensation**

1. A Party applying a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of substantially equivalent concessions. Such consultations shall begin within thirty (30) days of the application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within thirty (30) days after the consultations commence, 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. The right of suspension referred to in paragraph 2 shall not be exercised for the first year that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Chapter.

4. A Party shall notify the other Party in writing at least thirty (30) days before suspending concessions under paragraph 2.

5. 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.