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CHAPTER 7

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 7.1

General provisions

1. Each Party retains its rights and obligations arising from the Anti-dumping Agreement and from the SCM Agreement.
2. For the purposes of this Section, origin shall be determined in accordance with the applicable non-preferential rules of origin of each Party.

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ARTICLE 7.2

Transparency

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping or a countervailing investigation with respect to imports from the other Party and before proceeding to initiate such investigation, the Party shall provide written notification to the other Party.
2. Before initiating a countervailing investigation, a Party shall afford the other Party an opportunity to consult with its investigating authority with the aim of seeking a mutually agreed solution. The consultations shall be held after providing sufficient time, but no less than seven days after the date of sending of the invitation.
3. Pursuant to Article 6.2 of the Anti-dumping Agreement and Article 12.2 of the SCM Agreement, on request of an interested party, a Party shall grant such interested party the possibility to be heard in order to express their views during an anti-dumping or a countervailing investigation, provided that the granting of such request does not prevent the investigation from proceeding expeditiously.

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4. Before a final finding is issued, the investigating authority shall inform the parties participating in the investigation of the essential facts that form the basis for the decision. Such disclosure shall be made in writing and should take place in sufficient time for the parties to defend their interests. The preliminary finding, if issued, shall contain sufficient detailed information specifying the reasons leading to the decision.

ARTICLE 7.3

Consideration of public interest

Anti-dumping or countervailing measures may not be applied by a Party if, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. Such consideration of public interest shall be in accordance with the laws and regulations of a Party. The public interest assessment may take into account the situation of various interested parties, including the domestic industry, importers and their representative associations, representative users and representative consumer organizations, to the extent they have provided relevant information to the investigating authorities.

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ARTICLE 7.4

Lesser duty rule

If a Party takes a decision to impose an anti-dumping duty or a countervailing duty, that Party shall, in accordance with its law, apply a duty less than the margin of dumping or a duty less than the subsidy margin, as the case maybe, if such lesser duty would be adequate to remove the injury to the domestic industry.

SECTION B

GLOBAL SAFEGUARD MEASURES

ARTICLE 7.5

General provisions

Each Party retains its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.

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ARTICLE 7.6

Transparency

1. Notwithstanding Article 7.5 (General provisions), on request of the other Party and provided that such Party has a substantial interest, the Party initiating a safeguard investigation or intending to apply global safeguard measures shall provide as soon as possible a written notification of all pertinent information regarding the initiation of a safeguard investigation or the application of global safeguard measures including on the provisional findings, if relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.
2. To the extent permitted by the Safeguards Agreement, when applying global safeguard measures, the Parties shall endeavour to apply them in a way that least affects trade between the Parties.
3. For the purposes of paragraph 2 of this Article, if a Party intending to apply such global safeguard measures considers that the legal requirements are met for the application of definitive global safeguard measures, that Party shall notify the other Party having a substantial interest and, upon request, give the possibility to hold bilateral consultations. If no satisfactory solution has been reached within 12 days of the notification, the importing Party may apply the appropriate global safeguard measures to remedy the problem.

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4. For the purposes of this Article, a Party is considered to have a substantial interest when it is among the five largest suppliers of the imported good during the most recent three-year period, measured in terms of either absolute volume or value.

SECTION C

BILATERAL SAFEGUARD MEASURES

ARTICLE 7.7

Definitions

For the purposes of this Section:

- (a) "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 that good;

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- (b) "serious injury" means a significant overall impairment in the position of a domestic industry,
- (c) "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
- (d) "transition period" means 22 years from the date of entry into force of this Agreement.

ARTICLE 7.8

Application of a bilateral safeguard measure

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, a good 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 that the imports of that good from that Party cause or threaten to cause a serious injury to domestic producers of like or directly competitive goods, the other Party may apply appropriate bilateral safeguard measures under the conditions and in accordance with the procedures laid down in this Section.

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2. If the conditions set out in paragraph 1 are met, the bilateral safeguard measures of the importing Party may only consist of one of the following:

- (a) the suspension of the further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or
- (b) the increase in the rate of customs duty on the good concerned to a level which does not exceed the lesser of:
 - (i) the most-favoured nation applied rate of customs duty on the good in effect at the time the bilateral safeguard measure is applied; or
 - (ii) the most-favoured nation applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

ARTICLE 7.9

Conditions and limitations

1. A bilateral safeguard measure shall not be applied or maintained:
 - (a) except to the extent, and for such time, as may be necessary to prevent or remedy the situation described in Article 7.8(1) (Application of a bilateral safeguard measure) and to facilitate adjustment;

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(b) for a period exceeding two years, which may be extended by another two years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Section, that the measure continues to be necessary to prevent or remedy the situations described in Article 7.8(1) (Application of a bilateral safeguard measure) and Article 7.13 (Outermost regions of the European Union), and to facilitate adjustment, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or

(c) beyond the expiry of the transition period, except with the consent of the other Party.

2. Neither Party shall apply, with respect to the same product and during the same period:

(a) a bilateral safeguard measure provided for in this Agreement;

(b) a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement; and

(c) a special safeguard under Article 5 of the Agreement on Agriculture.

3. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good, in accordance with the Party's schedule in Annex 2-A (Schedules of tariff commitments).

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ARTICLE 7.10

Provisional bilateral safeguard measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, without complying with the requirements of Article 7.20(1) (Notifications and publications of definitive measures), following a preliminary determination that there is clear evidence that imports of a good originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the situations described in Article 7.8(1) (Application of a bilateral safeguard measure).
2. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the relevant procedural rules laid down in Article 7.9 (Conditions and limitations). The Party shall promptly refund any tariff increases if the investigation described in Article 7.15 (Initiation of a bilateral safeguard investigation) does not result in a finding that the requirements of Article 7.8 (Application of a bilateral safeguard measure) are met. The duration of any provisional measure shall be counted as part of the period described in point (b) of Article 7.9(1) (Conditions and limitations). The importing Party shall inform the other Party upon applying such provisional measures.

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ARTICLE 7.11

Compensation and suspension of concessions

1. A Party applying a bilateral safeguard measure shall consult with the other Party whose goods are subject to the measure in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects. The Party applying the bilateral safeguard measure shall provide an opportunity for those consultations no later than 30 days after the date of application of definitive bilateral safeguard measure.
2. If the consultations referred to in paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure. This suspension shall apply only for the minimum period necessary to achieve the substantially equivalent effects.
3. The right of suspension pursuant to paragraph 2 shall not be exercised for:
 - (a) the first two years during which the bilateral safeguard measure is in effect; and
 - (b) the first three years during which the measure is in effect, if it has been extended beyond two years.

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ARTICLE 7.12

Time lapse between two bilateral safeguard measures

A Party shall not apply a bilateral safeguard measure to a good originating in the other Party that has already been subject to such a measure for a period of time equal to half of the duration of the previous bilateral safeguard measure.

ARTICLE 7.13

Outermost regions of the European Union

1. If any good originating in India is being imported directly into the territory of one or several outermost regions¹ of the European Union in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost regions concerned, the European Union, after having examined alternative solutions, may exceptionally apply bilateral safeguard measures limited to the territory of the outermost regions concerned.

¹ On the date of entry into force of this Agreement, the outermost regions of the European Union are: Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, St. Martin, the Azores, Madeira and the Canary Islands. This Article shall also apply to a country or an overseas territory that changes its status to an outermost region by a decision of the European Council in accordance with the procedure set out in Article 355(6) of the Treaty on the Functioning of the European Union from the date of adoption of that decision. In the event that an outermost region of the European Union changes its status as such by the same procedure, this Article shall cease to be applicable from the European Council's decision accordingly. The European Union shall notify India of any change in the territories considered as outermost regions of the European Union.

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2. Without prejudice to paragraph 1, other provisions of this Section are also applicable to any bilateral safeguard measure applied under this Article. Any reference to "serious injury" in those other provisions shall be understood as "serious deterioration" when applied in relation to outermost regions of the European Union.

3. For the purposes of paragraphs 1 and 2, "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive goods. The determination of deterioration shall be based on objective factors, including the following elements:

- (a) the increase in the volume of imports in absolute or relative terms to domestic production and to imports from other sources; and
- (b) the effect of such imports on the situation of the relevant industry or the economic sector concerned, including inter alia on the levels of sales, production, financial situation and employment.

ARTICLE 7.14

Administration of bilateral safeguard investigations

1. For the application of bilateral safeguard measures, the competent investigating authority of each Party shall comply with this Section and, in cases not covered by this Section, the competent investigating authority of a Party shall apply the rules established under the law of that Party.

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2. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all bilateral safeguard investigations under this Section.

ARTICLE 7.15

Initiation of a bilateral safeguard investigation

1. A bilateral safeguard investigation may be initiated by the competent investigating authority of a Party pursuant to the law of that Party.
2. Once the investigation has been initiated, the written application shall be made available for public inspections, except for the confidential information contained therein.
3. Upon initiation of a bilateral safeguard investigation, the competent investigating authority shall publish a notice of initiation of the investigation in the official journal of the Party. The notice shall identify:
 - (a) the applicant that filed the written application, if applicable;

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- (b) the imported good that is the subject of the investigation and its indicative subheading and the tariff item number under which it is classified;
- (c) the period within which interested parties may apply to participate in the investigation; and
- (d) the name and address of the office to be contacted for more information.

ARTICLE 7.16

Investigation

1. A Party may apply a bilateral safeguard measure only following an investigation by the competent investigating authority of that Party in accordance with this Section. This investigation shall include reasonable public notice to all interested parties, the opportunity to be heard and any other appropriate means by which importers, exporters and other interested parties can present evidence and their views, including the opportunity to respond to the presentations of other parties.
2. Each Party shall ensure that its competent investigating authority completes any such investigation within 12 months of the date of its initiation.

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ARTICLE 7.17

Evidence of injury and causal link

1. In conducting its bilateral safeguard investigation, the competent investigating authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular the rate and amount of the increase in imports of the good concerned in absolute terms or relative to domestic production, the share of the domestic market taken by increased imports and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.
2. The determination of whether increased imports have caused or are threatening to cause the situations described in Article 7.8(1) (Application of a bilateral safeguard measure) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the good concerned and the situations described in Article 7.8(1) (Application of a bilateral safeguard measure). Where factors other than increased imports are, at the same time, causing the situations described in Article 7.8(1) (Application of a bilateral safeguard measure), such serious injury or threat thereof shall not be attributed to increased imports.

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ARTICLE 7.18

Hearings

In the course of each bilateral safeguard investigation, the competent investigating authority shall:

- (a) hold a public hearing, after providing reasonable notice, to allow all interested parties to present evidence and to be heard; or
- (b) provide an opportunity to all interested parties to be heard if they have made a written application within the period laid down in the notice of initiation.

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ARTICLE 7.19

Confidential information

1. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as confidential by the competent investigating authority of a Party. Such information shall not be disclosed without permission of the party submitting it.
2. Interested parties providing confidential information are requested to furnish non-confidential summaries thereof or, if those parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent investigating authority finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authority may disregard such information, unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

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ARTICLE 7.20

Notifications and publications of definitive measures

1. If the competent investigating authority of a Party takes the view that one of the situations described in Article 7.8(1) (Application of a bilateral safeguard measure) exists, that Party shall, as soon as possible, inform the other Party and provide all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the good involved and the proposed measures, and where applicable, the proposed date of application and expected duration.
2. Upon request, a Party proposing to apply a bilateral safeguard measure shall provide adequate opportunity for consultations with the other Party prior to the conclusion of the investigation.
3. The competent investigating authority shall also publish its determinations and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of the Party, including the description of the imported good and the situation, which has given rise to the application of measures pursuant to Article 7.8 (Application of a bilateral safeguard measure), the causal link between such situation and the increased imports, and the form, level and duration of the measures.
4. The competent investigating authority shall not disclose any information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the investigation.

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SECTION D

DISPUTE SETTLEMENT

ARTICLE 7.21

Non-application of dispute settlement

Neither Party shall have recourse to dispute settlement under Chapter 17 (Dispute settlement) for any matter arising under Section A (Anti-dumping and countervailing measures) and Section B (Global safeguard measures) of this Chapter.

CHAPTER 8

TRADE IN SERVICES

ARTICLE 8.1

Scope

1. This Chapter applies to measures by a Party affecting trade in services.