

CHAPTER 7 TRADE REMEDIES

Article 7.1 Definitions

For the purposes of this Chapter:

"Anti-Dumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

"Safeguards Agreement" means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement; and

"SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement.

Article 7.2 Anti-Dumping and Countervailing Measures

Each Party retains its rights and obligations under Article VI of the GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.

Article 7.3 Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.
2. Neither Party shall apply with respect to the same good at the same time:
 - (a) a bilateral safeguard measure as provided in Article 7.4 (Bilateral Safeguard Measures); and
 - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Article 7.4 Bilateral Safeguard Measures

Definitions:

For the purposes of this Article:

"bilateral safeguard measure" means a measure described in paragraph 1 of Article 7.4;

"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;

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

"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.

General:

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, either in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party causes serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:
 - (a) suspend the further reduction of any rate of customs duty on the imports of the originating good provided for under this Agreement;
 - (b) increase the rate of customs duty on the imports of the originating good to a level not to exceed the lesser of:
 - (i) the most favoured nation applied rate of duty on the good in effect at the time the measure is applied; and
 - (ii) the most favoured nation applied rate of duty on the good in effect on the day immediately preceding the date this Agreement enters into force.
2. The Parties agree that neither tariff rate quotas nor quantitative restrictions are permissible forms of bilateral safeguard measures.

3. The Parties agree that the right to apply bilateral safeguard measures shall be permanent for the duration of this Agreement. Nonetheless, upon a request by a Party, the Joint Committee may, not less than 5 years after the date on which the elimination or reduction of the customs duty on all the goods is completed, discuss and review the implementation and operation of this Article.

Notification and Consultation:

4. A Party shall notify the other Party in writing or by electronic communication:
 - (a) within 7 days from the initiation of a bilateral safeguard investigation;
 - (b) immediately upon making a finding of serious injury or threat thereof caused by increased imports; and
 - (c) immediately upon application of provisional or a definitive bilateral safeguard measure or extending the measure.
5. In making the notification referred to in subparagraphs 4(b) and 4(c), the Party proposing to apply 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 the increased imports, precise description of the good involved and the proposed measure and expected duration.
6. A Party proposing to apply a definitive bilateral safeguard measure or proposing the extension of a definitive bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party as far in advance, of making a definitive finding for applying or extending any such measure, with a view to reviewing the information arising from the investigation, and exchanging views on the measure. The Parties shall in such consultations, review, *inter alia*, the information provided by the competent investigating authority, to determine:
 - (a) compliance with this Article;
 - (b) whether the proposed measure should be applied; and
 - (c) the appropriateness of the proposed measure, including consideration of alternative measures.

Conditions and Limitations:

7. A Party shall apply a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2(c) of the Safeguards Agreement, and to this end,

- Article 3 and Article 4.2(c) of the Safeguards Agreement are incorporated into and form a part of this Agreement, *mutatis mutandis*.
8. While conducting a bilateral safeguard investigation, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and forms a part of this Agreement, *mutatis mutandis*.
 9. Each Party shall ensure that its competent authorities complete any such investigation within 8 months from the date of initiation which may be extended up to 1 year by the competent authority.
 10. Neither Party may apply a bilateral 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 2 years, except that the period may be extended by up to 2 years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a bilateral safeguard measure, including the period of initial application and any extension thereof, shall not exceed 4 years.
 11. No bilateral safeguard measure shall be applied to the import of an originating good for a period of 1 year from the date of commencement of tariff reduction or tariff elimination for that originating good provided for under this Agreement.
 12. When a Party terminates a bilateral safeguard measure, the rate of customs duty for the originating good subject to that bilateral safeguard measure shall be the rate that, according to that Party's Schedule of Tariff Commitments in Annex 2A (Schedule of Specific Tariff Commitments of India) or Annex 2B (Schedule of Specific Tariff Commitments of Oman), would have been in effect but for that bilateral safeguard measure.
 13. No bilateral safeguard measure shall be applied again to the import of an originating good that has been previously subject to such measure for a period of time equal to the period during which the previous measure was applied or 1 year since the expiry of such measure, whichever is longer.

14. Notwithstanding the provisions of paragraph 13, a bilateral safeguard measure with a duration of 180 days or less may be applied again to the import of an originating good if:
 - (a) at least 1 year has elapsed since the date of introduction of a bilateral safeguard measure on the import of that originating good; and
 - (b) such a bilateral safeguard measure has not been applied on the same originating good more than twice in the 4 year period immediately preceding the date of introduction of the measure.
15. Where the expected duration of a bilateral safeguard measure is over 1 year, the Party applying the bilateral safeguard measure shall progressively liberalise it at regular intervals during the period of application.

Provisional Safeguard Measures:

16. 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 pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as a result of the reduction or elimination of a customs duty under this Agreement, and such imports have caused serious injury, or threat thereof, to the domestic industry.
17. If a Party's competent authorities make a preliminary determination, the Party shall make such determination available to interested parties and shall provide interested parties at least 15 days to comment and submit their arguments with respect to such determinations.
18. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of paragraphs 5, 7, and 8.
19. The Party shall promptly refund any tariff increases if the investigation described in paragraphs 7 and 8 results in a finding that the requirements of paragraph 1 are not met. The duration of any provisional measure shall be counted as part of the period described in subparagraph 10(b).

Compensation:

20. No later than 30 days after a Party applies a definitive bilateral safeguard measure, the Party shall afford an opportunity to the other Party to consult regarding the appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects. The

applying Party shall provide such compensation as the Parties mutually agree.

21. If the Parties are unable to agree on compensation within 30 days in the consultations, the Party against whose originating good the bilateral safeguard measure is applied may suspend the application of concessions with respect to the originating goods of the other Party that has trade effects substantially equivalent to that of the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions only for the minimum period necessary to achieve substantially equivalent trade effects.
22. A Party against whose originating good the bilateral safeguard measure is applied shall notify the Party applying the bilateral safeguard measure in writing at least 30 days before it suspends concessions in accordance with paragraph 21.
23. The right to suspend the application of concessions referred to in paragraph 21 shall not be exercised for:
 - (a) the first 2 years that the measure is in effect; and
 - (b) the first 3 years during which the bilateral safeguard measure is in effect, where it has been extended beyond 2 years.
24. The applying Party's obligation to provide compensation under paragraph 20 and the other Party's right to suspend concessions under paragraph 21 shall cease on the termination of the bilateral safeguard measure.

Article 7.5

Subcommittee on Trade Remedies

1. The Parties agree to establish a Subcommittee on Trade Remedies under the CTG, consisting of representatives of each Party's competent authorities.
2. The Subcommittee on Trade Remedies shall meet annually or when requested by either Party.

Article 7.6

Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 13 (Dispute Settlement) for any matter arising under Article 7.2 and Article 7.3.