

**CHAPTER 7
TRADE REMEDIES**

**SECTION I
ANTI-DUMPING AND COUNTERVAILING MEASURES**

Article 7.1: 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. To this end, the provisions of the WTO Agreement on Anti-Dumping shall apply, *mutatis mutandis*, to the extent not specifically provided for in this Agreement.
2. No provision of this Agreement, including the provisions of Chapter 13 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to anti-dumping measures.

Article 7.2: Countervailing Measures

1. Each Party retains its rights and obligations regarding countervailing measures under Articles VI and XVI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, or any amendments or provisions that supplement or replace them. To this end, the provisions of the WTO Agreement on Subsidies and Countervailing Measures shall apply, *mutatis mutandis*, to the extent not specifically provided for in this Agreement.
2. No provision of this Agreement, including the provisions of Chapter 13 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to countervailing measures.

Article 7.3: Practices relating to Anti-dumping and Countervailing Duty Proceedings

1. Upon receipt by a Party's investigating authorities of a properly documented anti-dumping or countervailing duty application with respect to imports from the other Party, the Party shall within one week provide written notification and a copy of the written notification by electronic means, of its receipt of the application to the other Party.

2. In addition to the usual practice regarding notification in anti-dumping and countervailing investigations, the Parties, for the purposes of paragraph 1, designate the following contact points, to which such notification shall be forwarded in written copy and initially conveyed through electronic means at the earliest opportunity and not later than one week:

(a) for Thailand, the Department of Foreign Trade (email: butrade@moc.go.th), or its successor; and

(b) for Sri Lanka, the Department of Commerce (email: fortrade@doc.gov.lk), or its successor.

3. A Party, whose good is subject to an anti-dumping investigation by the other Party, may, by the due date for the submission of the response to the questionnaire¹, inform, where applicable, the investigating Party in the importing country that there are no significant exports of that product to the investigating Party. Such information, together with all relevant information on record, may be taken into account by the investigating authority of the other Party in its findings. The purpose of this provision, among others, is to determine whether the volume of dumped imports is negligible or not.

4. In any proceeding in which the investigating authorities determine to conduct an on-the-spot investigation to verify information provided by a respondent and pertinent to the calculation of anti-dumping duty margins or the level of a countervailable subsidy, the investigating authorities shall promptly notify that respondent of their intent, and:

¹ This relates to the questionnaire referred to in Article 6 of the WTO Anti-Dumping Agreement.

(a) shall provide to the respondent at least seven days advance notice of the date on which investigating authorities intend to conduct any such on-the-spot investigation to verify the information; and

(b) shall at least seven days prior to any such on-the-spot investigation to verify the information, provide to the respondent a document that sets forth the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation the respondent is to make available for review.

5. After an on-the-spot investigation is completed, and subject to the protection of confidential information², a written report that describes the methods and procedures followed in carrying out the verification and the extent to which the information provided by the respondent was supported by the documents reviewed during the verification shall, to the extent possible, be provided to the respondent.

6. A Party's investigating authorities shall maintain a public file for each investigation and review that contains:

(a) all non-confidential documents that are part of the record of the investigation or review; and

(b) to the extent feasible without revealing confidential information, non-confidential summaries of confidential information that is contained in the record of each investigation or review.

The public file and a list of all documents that are contained in the record of the investigation or review shall be made available upon request for inspection and copying during the investigating authorities' normal business hours or electronically available for download.

7. If, in an anti-dumping or countervailing duty investigation, a Party's investigating authorities determine that an interested party's timely response to a request for information does not comply with the request, the investigating authorities:

² For the purposes of this Chapter, "confidential information" includes information which is provided, on a confidential basis and which is by its nature confidential, for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information. Charges for the copies, if any, are limited in amount to the approximate cost of the services rendered.

(a) inform that interested party that submitted the response of the nature of the deficiency; and

(b) to the extent practicable in light of the time-limits established to complete the anti-dumping or countervailing duty investigations, provide that interested party with an opportunity to remedy or explain the deficiency.

If that interested party submits further information in response to the deficiency and the investigating authorities find such response not satisfactory, or the response is not submitted within the applicable time limits, and if the investigating authorities disregard all or part of the original and subsequent responses, the investigating authorities explain the reasons for disregarding the responses in the determination or other written document.

8. Each Party shall ensure, before the final determination, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision to apply measures, without prejudice to paragraph 5 of Article 6 of the Anti-Dumping Agreement and paragraph 4 of Article 12 of the Subsidies and Countervailing Measures Agreement. Disclosures shall be made in writing, and allow interested parties sufficient time to provide their comments. The investigating authorities of a Party shall in their final determination, take into account such comments given during the time provided for such comments.

SECTION II COOPERATION

Article 7.4: Areas of Cooperation

1. The Parties will endeavor, within available resources, to cooperate in preventing circumvention of trade remedies. The areas of cooperation are as follows:

- (a) forwarding questionnaires and other documents to interested parties;
- (b) exchanging information relating to investigations; and
- (c) any other possible areas to be mutually agreed by the Parties.

2. This Section shall not be construed to require the other Party to furnish or allow access to confidential information pursuant to this Chapter, the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its laws and regulations;

(b) be contrary to any of its laws and regulations, including but not limited to, those protecting personal data or financial affairs and accounts of individual customers of financial institution;

(c) impede law enforcement; or

(d) prejudice legitimate commercial interests, which may include competitive position of particular enterprises, public or private.

3. Where a Party provides information to the other Party in accordance with this Article and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without specific written permission of the Party providing the information.

4. Chapter 13 (Dispute Settlement) and Section I (Administration and Institutional Provisions) of Chapter 14 (Institutional and Final Provisions) shall not apply to this Article.

SECTION III
GLOBAL SAFEGUARD MEASURES

Article 7.5: Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. To this end, the provisions of the Article XIX of GATT 1994 and the Safeguards Agreement shall apply, *mutatis mutandis*, to the extent not specifically provided for in this Agreement.
2. No provision of this Agreement, including the provisions of Chapter 13 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to global safeguards measures.
3. No Party shall apply, with respect to the same product at the same time:
 - (a) a provisional or Bilateral safeguard measure; and
 - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.
4. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of the notification given to the WTO Committee on Safeguards under paragraph 1(a) of Article 12. of the Safeguards Agreement.

SECTION IV BILATERAL SAFEGUARD MEASURES

Article 7.6: Definitions

For the purposes of this Chapter:

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

(b) **threat of serious injury** means the serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility;

(c) **domestic industry** means the producers as a whole of the like or directly competitive products with respect to an imported good, operating in the territory of the Party or, when it is not possible, those whose collective output of the like or directly competitive products constitutes a major proportion of the total production of such products;

(d) **bilateral safeguard measure** means a safeguard measure described in this Section;

(e) **competent authority** means the investigating authorities as designated by the Parties for the purpose of this Section;

(f) **critical circumstances** means critical circumstances as referred to in paragraph 1 of Article 7.9 (Provisional Measures);

(g) **transitional safeguard period** means, in relation to a particular good, the period from the date of entry into force of this Agreement until eight years after the date on which the elimination or reduction of the customs duty on that good is completed, in accordance with a Party's Schedule of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments – Thailand) or Annex 2B (Schedule of Tariff Commitments – Sri Lanka);

(h) **customs duty** means customs duties as defined in Article 2.1 (Definitions) of Chapter 2 (Trade in Goods); and

(i) **originating good** means an originating good as defined in Article 3.1 (Definitions) of Chapter 3 (Rules of Origin).

Article 7.7: Application of Bilateral Safeguard Measures

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, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party cause or threaten to cause a serious injury to domestic producers of like or directly competitive products, the importing Party may, to the extent necessary to prevent or remedy the serious injury to its domestic industry and to facilitate its domestic industry's adjustment:

(a) suspend the further reduction of any rate of customs duty on the good provided for under Annex 2A (Schedule of Tariff Commitments – Thailand) or Annex 2B (Schedule of Tariff Commitments – Sri Lanka) on the originating good; or

(b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

(i) The MFN applied rate of customs duty in effect at the time the measure is taken; and

(ii) The MFN applied rate of customs duty] in effect on the day immediately preceding the date of entry into force of this Agreement.

2. The Parties agree that neither tariff rate quotas nor quantitative restrictions are permissible forms of a bilateral safeguard measure.

Article 7.8: Conditions and Limitations on Imposition of a Bilateral Safeguard Measure

The following conditions and limitations shall apply to an investigation or a measure described in Article 7.7:

(a) A Party shall within five working days deliver written notice to the other Party upon:

(i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(ii) making a finding of serious injury or threat thereof caused by increased imports;

(iii) taking a decision to apply or imposition or extension of bilateral safeguard measure; or

(iv) taking a decision to modify a bilateral safeguard measure.

(b) in making the notification referred to in subparagraph (a), 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 of originating good, precise description of the originating good subject to the bilateral safeguard measure including its heading and subheading under the Harmonized System and the national nomenclature of the Party and the proposed measure, proposed date of introduction and expected duration and, if applicable, a timetable for the progressive liberalisation of the bilateral safeguard measure, and in the case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations, with a view to, inter alia, reviewing the information provided under subparagraphs (a) and (b) that has arisen from the investigation, exchanging views on the bilateral safeguard measure, including consideration of alternative measures and compensation.

(d) A Party shall apply the measure only following an investigation by the competent authorities of such Party in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Safeguards Agreement; and to this end, Article 3 and paragraph 2 of Article 4 of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.

(e) The investigation shall be promptly terminated and no measure taken if imports of the subject product represent less than 3 per cent of total imports³ of products under the same HS code.

³ The time frame to be used for calculating the applicable percentages shall be the most recent period of 12 months, where data is available.

(f) Each Party shall ensure that its competent authorities complete any such investigation within one year from the date of its initiation.

(g) No measure shall be maintained:

(i) except to the extent and for such time as may be necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment;

(ii) for a period exceeding three years except that, in exceptional circumstances, the period may be extended by up to an additional one year, to a total maximum of four years from the date of first imposition of the measure, if the investigating authorities determine in conformity with procedures set out in subparagraphs (a) through (f) that the safeguard 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 and provided that provisions of Article 7.8 (Conditions and limitations on imposition of a Bilateral Safeguard measure) and Article 7.10 (Compensation) are observed;

(iii) beyond the expiration of the transitional safeguard period.

(h) No bilateral safeguard measure shall be applied to the import of an originating good for a period of one year from the date on which the first tariff reduction or tariff elimination takes effect for that originating good as committed under this Agreement.

(i) Upon the termination of the bilateral safeguard measure, the rate of customs duty for an originating product subject to the measure shall be the rate which would have been in effect, as per Annex 2A (Schedule of Tariff Commitments – Thailand) or Annex 2B (Schedule of Tariff Commitments – Sri Lanka), but for the bilateral safeguard measure.

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

Article 7.9: Provisional Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, an importing Party may apply a provisional bilateral

safeguard measure, which shall take the form of the measures set out in subparagraph 1(a) or (b) of Article 7.7 (Application of Bilateral Safeguard Measures), 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 the result of the reduction or elimination of a customs duty under this Agreement, and such increased imports have caused or are threatening to cause serious injury to a domestic industry of the importing Party.

2. The duration of any provisional safeguard measure shall not exceed 200 days, during which period the Party applying that provisional measure shall comply with the requirements of subparagraph (d) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure). If the investigation referred to in subparagraph (d) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure) does not result in a finding that the requirements of Article 7.7 (Application of Bilateral Safeguard Measures) are met, the Party applying the provisional safeguard measure shall promptly refund any additional customs duties collected as a result of the provisional safeguard measure. For greater certainty, the duration of any provisional safeguard measure shall be counted as part of the total period prescribed by subparagraph (g)(ii) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure).

3. A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations shall be initiated immediately after the provisional bilateral safeguard measure is applied.

Article 7.10: Compensation

1. A Party proposing to apply or extend a bilateral safeguard measure shall, in consultation with the Party that would be affected by such a measure, provide mutually agreed, adequate means of trade compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the measure. The Party applying a bilateral safeguard measure shall provide the Party that would be affected by such a measure with an opportunity to consult within 30 days after the date on which the bilateral safeguard measure was applied.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade compensation within 30 days after the commencement of such consultations, the Party against whose good the bilateral safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade in goods of the Party applying the bilateral safeguard measure.
3. A Party against whose good a bilateral safeguard measure is applied shall deliver a written notice to the Party applying the bilateral safeguard measure at least 30 days before it suspends the application of concessions in accordance with paragraph 2.
4. The obligation to provide compensation under paragraph 1 and the right to suspend the application of concessions in accordance with paragraph 2 shall cease on the termination of the bilateral safeguard measure.
5. The right to suspend the application of concessions in accordance with paragraph 2 shall not be exercised for the first three years during which the bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and that it conforms to this Agreement.

Article 7.11: Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to bilateral safeguard measures.
2. Each Party shall entrust the determinations of serious injury or threat thereof in safeguard investigation proceedings to a competent investigating authority.
3. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures relating to bilateral safeguard measures.
4. Nothing in this Section shall require the Parties to disclose confidential information the disclosure of which would be prejudicial to public order, impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

5. A written notice referred to in subparagraph (a) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure), paragraph 3 of Article 7.9 (Provisional Measures) and paragraph 3 of Article 7.10 (Compensation) shall be in English.

Article 7.12: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 13 (Dispute Settlement) for any matter arising under Section I (Anti-Dumping and Countervailing Measures) and Section III (Global Safeguard Measures).