

7. Replace Chapter 7 (Standards, Technical Regulations and Conformity Assessment Procedures) with:

CHAPTER 7

TRADE REMEDIES

Article 7.1

Definitions

For the purposes of this Chapter:

- (a) **confidential information** means 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); and
- (b) **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive goods operating within the territory of a Member State, or those producers whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of that good.

Section A Safeguard Measures

Article 7.2

Global Safeguard Measures

1. Nothing in this Agreement shall affect the rights and obligations of the Member States under Article XIX of GATT 1994 and the Safeguards Agreement.¹

2. Unless otherwise provided in paragraph 3, nothing in this Agreement shall confer any rights or impose any obligations on the Member States with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.²

3. On request of another Member State, a Member State intending to take safeguard measures pursuant to Article XIX of GATT 1994 and the Safeguards Agreement shall immediately provide written notice or Uniform Resource Locator (URL) of all pertinent information required under paragraphs 1, 2, and 4 of Article 12 of the Safeguards Agreement on the initiation of a safeguard investigation, the preliminary determination, and the final finding of the investigation. A Member State shall be deemed to be in compliance with this paragraph if it has notified the measure to the WTO Committee on Safeguards in accordance with Article 12 of the Safeguards Agreement.

¹ For greater certainty, each Member State retains its rights and obligations under Article 5 of the Agreement on Agriculture in view of Article 17.2 (Relation to Other Agreements).

² For greater certainty, each Member State retains its rights and obligations under Article 5 of the Agreement on Agriculture in view of Article 17.2 (Relation to Other Agreements).

Section B

Anti-Dumping and Countervailing Duties

Article 7.3

General Provisions

1. Member States retain their rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement. This Section affirms and builds on those rights and obligations.

2. In any proceeding in which the investigating authorities of a Member State determine to conduct an on-the-spot investigation to verify information provided by a respondent³ 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:

- (a) shall, to the extent possible, provide to the respondent at least 10 days advance notice for anti-dumping investigation and 21 days advance notice for countervailing duty of the date on which investigating authorities intend to conduct any such on-the-spot investigation to verify the information, unless otherwise agreed between the respondent and the investigating authority; and
- (b) shall, to the extent possible, at least seven days prior to the date of the on-the-spot anti-dumping investigation and at least 14 days prior to the date of the on-the-spot countervailing duty investigation to verify the information, provide to the respondent

³ For the purposes of this paragraph, **respondent** means a producer, manufacturer, exporter, importer, and, where appropriate, a government or government entity, that is required by a Member State's investigating authorities to respond to an anti-dumping or countervailing duty questionnaire.

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,

provided that the implementation of subparagraphs (a) and (b) does not unnecessarily delay the conduct of the investigation.

3. A Member State's investigating authorities shall maintain a non-confidential file for each investigation and review containing:

- (a) all non-confidential documents which 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 contained in the record of each investigation or review.

4. During an investigation or review, a Member State's investigating authorities shall make the non-confidential file of the investigation or review available to interested parties either:

- (a) physically for inspection and copying during the investigation authorities' normal business hours; or
- (b) electronically.

5. When providing the non-confidential versions of applications, notifications, reports, and findings of the investigation, all Member States are required to provide these in formats⁴ that can be digitally translated.

⁴ The exchange of all official communications and documentations, including notifications and requests made under this paragraph, shall be made through electronic means to the competent

6. Should a Member State decide to impose any anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, and if any Member State would impose the lesser duty that is adequate to remove the injury to the domestic industry, it should be less than the margin of dumping or subsidy.

Article 7.4

Notification and Consultations

1. On receipt by a Member State's competent authorities of a properly documented anti-dumping application with respect to imports from another Member State, the Member State shall provide written notice to the other Member State of its receipt of the application, at least seven days or on a reasonable timeline before initiating such an anti-dumping investigation.⁵

1.

2. On receipt by a Member State's competent authorities of a properly documented countervailing duty application with respect to imports from another Member State, and before initiating an investigation, the Member State shall provide written notice to the other Member State of its receipt of the application, to the extent possible, at least 20 days in advance of the date of initiation of a countervailing investigation and invite the other Member State for consultations on the application. The Member State's competent authority shall hold the consultation to the extent possible within 20 days in advance of the date of initiation of a countervailing investigation.

authorities of the Member States subject to the requirement to protect confidential information in a searchable PDF.

⁵ Member States shall without prejudice to their respective positions, undertake a review of the notification timelines under this Article within three years of the date of the entry into force of the Second Protocol, with a view to reviewing whether such notification timelines can be strengthened and enhanced.

3. In view of the consultations referred to in paragraph 2, the Member State intending to initiate the investigation referred to in paragraph 2 shall, before the initiation of the investigation, on request of the other Member State, provide the non-confidential version of the complaint to the other Member State. The Member State intending to initiate the investigation shall endeavour to provide adequate opportunity to the other Member State to comment and submit additional information or documents.

Article 7.5

Prohibition of Zeroing

When margins of dumping are established, assessed, or reviewed under Article 2, paragraphs 3 and 5 of Article 9, and Article 11 of the AD Agreement, all individual margins, whether positive or negative, shall be counted for weighted average-to-weighted average and transaction-to-transaction comparison. Nothing in this Article shall prejudice or affect a Member State's rights and obligations under the second sentence of subparagraph 4.2 of Article 2 of the AD Agreement in relation to weighted average-to-transaction comparison.

Article 7.6

Disclosure of the Essential Facts

Each Member State shall ensure, to the extent possible, at least 10 days before the final determination, the issuance of the 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 AD Agreement and paragraph 4 of Article 12 of the SCM Agreement. Disclosures shall be made in writing, and, to the extent possible, allow interested parties at least seven days,

after the issuance of the essential facts to the other parties, to provide their comments. The investigating authorities of a Member State should, in their final determination, take into account such comments, if the comments have been received in the time frames established by that Member State's laws and regulations or by its investigating authorities.

Article 7.7

Treatment of Confidential Information

The investigating authorities of a Member State shall require interested parties providing confidential information to furnish non-confidential summaries of such information, as referred to in subparagraph 5.1 of Article 6 of the AD Agreement and subparagraph 4.1 of Article 12 of the SCM Agreement. The non-confidential summaries referred to in subparagraph 5.1 of Article 6 of the AD Agreement and subparagraph 4.1 of Article 12 of the SCM Agreement shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence in order to allow other interested parties in the investigation an opportunity to respond and defend their interests, consistent with paragraph 2 of Article 6 of the AD Agreement and paragraph 2 of Article 12 SCM Agreement.

Article 7.8

Best Practices in Anti-Dumping and Countervailing Duty Measures⁶

1. Member States recognise the right of the Member States to conduct anti-dumping and countervailing duty

⁶ This Article, and any matter arising under the Article, shall not be subject to dispute settlement under this Agreement and shall not prejudice the rights of the Member States to apply the trade remedy measures consistent with Article VI of GATT 1994, the AD Agreement, and the SCM Agreement.

investigations to apply trade remedy measures consistent with Article VI of GATT 1994, the AD Agreement, and the SCM Agreement. The following best practices⁷ in anti-dumping and countervailing duties are practised by some Member States in accordance with their laws and regulations and may promote the goals of transparency and due process in trade remedy proceedings.

A. Opportunity to Remedy or Explain Deficiency in Request for Information

2. If, in an anti-dumping or countervailing duty investigation, a Member State'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:

- (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.

⁷ The practices included in this Article do not constitute a comprehensive list of practices relating to anti-dumping and countervailing duty proceedings. No inference shall be drawn from the inclusion or exclusion of a particular aspect of such proceedings in this Article.

B. Undertakings

3. After the importing Member State's investigating authorities initiate an anti-dumping or countervailing duty investigation, on request of the exporting Member State, the importing Member State transmits to the exporting Member State's embassy located in the importing Member State or the exporting Member State's competent authorities written information regarding the importing Member State's procedures for requesting its authorities to consider a price undertaking, including the time frames for offering and concluding any such undertaking.

2.

4. In an anti-dumping investigation, where the importing Member State's investigating authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the importing Member State affords due consideration, and provides an opportunity for consultations, to exporters of the exporting Member State regarding the proposed price undertaking which, if accepted, results in suspension of the investigation without imposition of anti-dumping duties, through the means provided for in the importing Member State's laws, regulations, and procedures.

3.

5. In a countervailing duty investigation, where the importing Member State's investigating authorities have made a preliminary affirmative determination of subsidisation and injury caused by such subsidisation, the importing Member State affords due consideration, and provides an opportunity for consultations, to the exporting Member State and its exporters, regarding the proposed undertaking which, if accepted, results in suspension of the investigation without imposition of countervailing duties, through the means provided for in the importing Member State's laws, regulations, and procedures.

C. Public Notice and Explanation of Determination

6. When a public notice of final determination referred to in paragraph 2 of Article 12 of the AD Agreement, is given, the public notice sets forth, or otherwise make available through a separate report, in sufficient detail, the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. Such findings and conclusions included in the public notice or the separate report also include the rationale behind the findings and conclusions of the investigating authorities.

7. For the purposes of paragraph 6 and subject to the protection of confidential information, the public notice or the separate report contains in particular:

- (a) the margins of dumping established, an explanation of the basis upon which normal values and export prices were established, and of the methodology used in the comparison of the export prices and normal values including any adjustments; and
- (b) information relevant to the injury determination, including information concerning the volume and the effect of the dumped imports on prices in the domestic market for like goods, the detailed methodology used in the calculations of price undercutting, the consequent impact of the dumped imports on the domestic industry, and the demonstration of a causal relationship including the examination of factors other than the dumped imports as referred to in paragraph 5 of Article 3 of the AD Agreement.

8. The public notice or the separate report sets forth the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers referred to in subparagraph 2.2 of Article 12 of the AD Agreement in

sufficient detail to permit a reasonable understanding of the investigating authorities' reasons for the acceptance or rejection and to allow the exporters and importers to assess whether the investigating authorities' treatment of those arguments or claims were consistent with the laws and regulations of the Member State of the investigating authorities, and the WTO Agreement.

D. Public Interest Evaluation

9. Member States may take public interest⁸ into consideration, when deciding whether or not to impose anti-dumping or countervailing duties.

Article 7.9

Application on Sunset Reviews

An expiry review under paragraph 3 of Article 11 of the AD Agreement and paragraph 3 of Article 21 of the SCM Agreement, shall be initiated at an appropriate time prior to the expiry of the imposition of the anti-dumping duties or countervailing duties as defined in each Member State's domestic legal framework. Each Member State shall provide consultation upon request, on any issues arising from the third or subsequent expiry review investigation, with a view to arriving at a mutually acceptable solution and avoiding the perpetual imposition of anti-dumping duties and countervailing duties measures as far as possible.⁹ The consultation shall not prevent a Member State from initiating an expiry review or maintaining duties as long as and to the extent necessary to

⁸ This may include the situation of the domestic industry, importers, and other interested parties, to the extent they have provided relevant information to the investigating authorities.

⁹ Anti-dumping duties and countervailing duties are encouraged not to be imposed beyond 20 years after the date of the imposition unless otherwise provided by Member States' laws and regulations and relevant WTO Agreements. This footnote will only be applicable to the investigations which are initiated after the entry into force of the Second Protocol.

counteract dumping and subsidy which are causing injury, in accordance with the relevant WTO Agreements.

Section C Transparency, Co-operation, and Committee on Trade Remedies

Article 7.10

Transparency

1. Each Member State retains its rights and obligations under Articles VI and XIX of GATT 1994, the Safeguards Agreement, the AD Agreement, and the SCM Agreement. This Agreement does not confer any additional rights or obligations on the Member States with regard to global safeguard, anti-dumping or countervailing measures.
2. Notwithstanding, upon request, a Member State shall be provided with full opportunity, for the defence of their interests, for consultations or meetings on any issues arising from any trade remedies investigations by a Member State. Through such consultation or meeting, a Member State may exclude imports of specific products, if such products do not cause or threaten to cause serious or material injury, as defined under the relevant WTO Agreements, to the domestic industry that produces like, directly competitive, or closely resembling products.
3. A Member State shall, to the extent possible, make the notification required under Articles VI and XIX of GATT 1994, the Safeguards Agreement, the AD Agreement, and the SCM Agreement, where applicable, to the relevant authorities or to the Committee on Trade Remedies, through the ASEAN Secretariat.

Article 7.11

Co-operation

1. Member States shall strengthen their co-operation under this Chapter, including by:

(a) facilitating the exchange of Member States' knowledge, experiences, and best practices on trade remedy laws and policies;

(b) discussing emerging issues related to trade remedies and other related measures, including anti-circumvention measures;

(c) improving co-operation between the Member States' authorities responsible for matters on trade remedies; and

(d) co-operation on any other matters that the Member States agree as necessary.

2. Co-operation activities referred to in paragraph 1 will be identified and included in the Committee on Trade Remedies' work programme, which will commence no later than three years of the date of entry into force of the Second Protocol.

3. Co-operation activities undertaken under this Chapter are subject to availability of resources at any terms and conditions agreed among Member States.

Article 7.12

Committee on Trade Remedies

1. Member States hereby establish a Committee on Trade Remedies, consisting of representatives at an appropriate

level from relevant agencies of each Member State responsible for trade remedy matter.

2. The functions of the Committee on Trade Remedies are as follows:

- (a) to monitor the implementation of this Chapter;
- (b) to develop and implement the co-operation work programmes; and
- (c) to report to the ATIGA Joint Committee, as necessary, updates on implementation issues, implementation of the co-operation activities and others.

3. The Committee on Trade Remedies shall meet as and when necessary, or as requested by Member States.

Article 7.13

Non-Application of Dispute Settlement

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter. The applicability of dispute settlement mechanisms to this Chapter will be subject to review in accordance with Article 17.5 (General Review).