

Chapter 8 Trade Remedies

Section A Global Safeguard Measures

Article 78: Global Safeguard Measures

1. Each Party maintains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.
2. Neither Party may apply, with respect to the same product, at the same time:
 - (a) a bilateral safeguard measure; and
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Section B Bilateral Safeguard Measures

Article 79: Imposition of a Bilateral Safeguard Measure

1. If, as a result of the reduction or elimination of a duty provided for in this Agreement, an originating product benefiting from preferential tariff treatment under this Agreement 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 as to constitute a substantial cause of serious injury or threat thereof, to a domestic industry producing a like or directly competitive product, the importing Party may impose a safeguard measure described in paragraph 2, during the transition period only.
2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and to facilitate adjustment:
 - (a) suspend the further reduction of any rate of duty provided for under this Agreement on the product; or
 - (b) increase the rate of duty on the product to a level not to exceed the lesser of:
 - (i) the most-favoured-nation (hereinafter "MFN") applied rate of duty in effect at the time the measure is applied; or
 - (ii) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.⁴

⁴ The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of a safeguard measure.

3. If an originating product is imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production and under such conditions as to cause material retardation of the establishment of a domestic industry producing a like or directly competitive product, the importing Party may impose a safeguard measure that may consist in an increase of the rate of duty on the product to a level not to exceed the MFN applied rate of duty in effect at the time the measure is applied.⁵

Article 80: Standards for a Definitive Bilateral Safeguard Measure

1. Neither Party may maintain a safeguard measure:
 - (a) except to the extent and for such time as may be necessary to prevent or remedy serious injury or threat thereof or material retardation, and to facilitate adjustment or establishment, as the case may be;
 - (b) for a period exceeding 1 year; except that the period may be extended up to 3 years if the competent authorities determine, in conformity with the procedures set out in Article 81 (Investigation Procedures and Transparency Requirements), that the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof or material retardation and to facilitate adjustment or establishment, and that there is evidence that the industry is adjusting or establishing, as the case may be.
2. In order to facilitate adjustment or establishment in a situation where the expected duration of a safeguard measure is over 1 year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
3. Regardless of its duration, such measure shall terminate at the end of the transition period or at the end of the period defined in footnote 5 of Article 79 (Imposition of a Bilateral Safeguard Measure), as the case may be.
4. No safeguard measure shall be applied to the import of a product that has previously been subject to such a measure, unless a period of time equal to half of that during which the safeguard measure was applied for the immediately preceding period has elapsed.
5. On the termination of a safeguard measure, the rate of duty shall be the duty set out in the Party's Schedule attached to Annex 2 (Tariff Elimination) of this Agreement as if the safeguard measure has never been applied.

⁵ This provision is only applicable for a period of 7 years from the date of entry into force of this Agreement.

Article 81: Investigation Procedures and Transparency Requirements

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authority in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In determining whether increased imports of an originating product of the other Party have caused serious injury or are threatening to cause serious injury to a domestic industry, the competent authority of the importing Party shall follow the rules in Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement; to this end, Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 82: Provisional Bilateral Safeguard Measures

1. In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that the increased imports have caused or are threatening to cause serious injury or material retardation to a domestic industry.

2. The duration of the provisional safeguard measure shall not exceed 200 days. Such a measure should take any of the forms set out in Article 79.2(b) (Imposition of a Bilateral Safeguard Measure) or 79.3 of this Section during which period the pertinent requirements of Article 79 (Imposition of a Bilateral Safeguard Measure) and Article 81 (Investigation Procedures and Transparency Requirements) shall be met. The guarantees or the received funds arising from the imposition of a provisional safeguard measure shall be promptly released or refunded, as it corresponds, when the investigation does not determine that increased imports have caused or threaten to cause serious injury or material retardation to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a definitive safeguard measure.

Article 83: Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, when:
 - (a) initiating an investigation under this Section;
 - (b) applying a provisional measure;
 - (c) making a finding of serious injury or threat thereof, or material retardation caused by increased imports;
 - (d) taking a decision to impose or extend a definitive safeguard measure; and

(e) taking a decision to modify a measure previously imposed.

2. In making the notifications referred to in subparagraphs (d) and (e) of paragraph 1, the Party applying the measure shall provide the other Party a copy of the public version of the finding and all pertinent information, such as a precise description of the product involved, the proposed measure, the grounds for introducing such a measure, the proposed date of introduction and its expected duration. The notifying Party shall provide a courtesy non-official English translation of the notification.

3. On request of a Party whose product is subject to a safeguard proceeding under this Section, the Party conducting that proceeding shall enter into consultations with the other Party to review a notification under paragraph 1 or any public notice or report that the competent authority has issued in connection with the proceeding.

4. Consultations may be held in person or by any technological means available to the Parties.

Article 84: Compensation and Suspension of Concessions

1. A Party applying a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually-agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the safeguard measure shall provide opportunity for such consultations no later than 30 days after the application of the measure.

2. If the Parties are unable to reach agreement on compensation within 30 days after the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

4. 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.

Article 85: Definitions

For purposes of this Section:

competent authority means:

(a) in the case of China, the Ministry of Commerce, or its successor;
and

- (b) in the case of Costa Rica, the Trade Remedies Department of the Ministry of Economy, Industry and Commerce (*Departamento de Defensa Comercial del Ministerio de Economía, Industria y Comercio*), or its successor;

directly competitive product refers to the product which, having different physical characteristics and composition to those of the imported product, fulfils the same functions of the latter, satisfies the same needs, and is commercially substitutable;

domestic industry means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;

like product refers to the identical product, that is, the product that is the same in all aspects as the imported product, or in the absence of such a product, to another product which, in spite of not being the same in all aspects, has characteristics closely resembling to those of the imported product;

safeguard measure means a safeguard measure described in paragraph 2 and 3 of Article 79 (Imposition of a Bilateral Safeguard Measure);

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

substantial cause means a cause which is important and not less than any other cause;

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 7 year period beginning on the date of entry into force of this Agreement, except in the case of a product where the liberalization process lasts 7 or more years, the transition period shall be equal to the tariff elimination period according to the schedules attached to Annex 2 (Tariff Elimination) of this Agreement.

Section C

Antidumping and Countervailing Measures

Article 86: Antidumping and Countervailing Measures

1. Except as otherwise provided in this Section, the Parties agree to abide fully by the provisions of the WTO Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.

2. The Parties agree to observe the following practices in anti-dumping cases between them:

- (a) immediately following the receipt of a properly documented application from an industry in one Party for the initiation of an anti-dumping duty investigation in respect of products from the other Party, the Party that has received the properly documented application shall immediately notify the other Party of the receipt of the application;
 - (b) during any anti-dumping investigation involving the Parties, the Parties agree to include a courtesy non-official translation to the English language of all notification letters between the Parties;
 - (c) a Party's investigating authority shall take due account of any difficulties experienced by one or more exporters of the other Party in supplying information requested and provide any assistance practicable; on request of an exporter of the other Party, a Party's investigating authority shall make available the timeframes, procedures and any documents necessary for the offering of an undertaking.
3. For purposes of this Section, investigating authority is:
- (a) for China, Ministry of Commerce, or its successor; and
 - (b) for Costa Rica, the Trade Remedies Department of the Ministry of Economy, Industry and Commerce (*Departamento de Defensa Comercial del Ministerio de Economía, Industria y Comercio*), or its successor.

Section D Dispute Settlement

Article 87: Dispute Settlement

The actions taken in accordance with Article XIX of the GATT 1994, the Safeguards Agreement, the WTO Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures shall not be subject to the provisions of Chapter 14 (Dispute Settlement) of this Agreement.

Section E Cooperation

Article 88: Cooperation

The Parties may establish a cooperation mechanism between the investigation authorities of each Party to ensure that they have a clear understanding of the practices adopted by the other Party in trade remedies investigations.