

## CHAPTER 8 : BILATERAL SAFEGUARDS

### ARTICLE 8.1 : DEFINITIONS

For purposes of this Chapter:

1. **directly competitive good** means the good which, having different physical characteristics and composition to those of the imported good, fulfils the same functions of the latter, satisfies the same needs, and is commercially substitutable;
2. **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes an important proportion of the total domestic production of such good;
3. **interested parties** includes the petitioner(s) under Article 8.3 (Standards for a Safeguard Measure), exporters, importers and any others who demonstrate a legitimate interest in the investigation;
4. **like good** refers to the identical good, that is, the good that is the same in all aspects as the imported good, or to another good which, in spite of not being the same in all aspects, has very similar characteristics to those of the imported good;
5. **serious injury** means a significant overall impairment in the situation of a domestic production sector;
6. **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;
7. **transition period** means the ten-year period following the entry into force of this Agreement, save that for any good for which the Schedule to Annex 2A (Peru Tariff Schedule) or 2B (Singapore Tariff Schedule), as the case may be, of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of ten (10) years or more, **transition period** means the tariff elimination period for the good set out in that Schedule plus five (5) years.
8. **unforeseen development of circumstances** means unexpected changes of facts not associated with:
  - (a) the tariff elimination programme under this Agreement; or
  - (b) limitations in the competitiveness of a certain domestic production sector,

that could generate, directly or indirectly, serious injury, or threat thereof, to the domestic industry.

#### ARTICLE 8.2 : IMPOSITION OF A SAFEGUARD MEASURE

1. A Party may impose a safeguard measure during the transition period if, as a result of the unforeseen development of circumstances or of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good in the other Party's territory is imported to the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

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 facilitate adjustment:

- (a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or
- (b) increase the rate of duty on the good to a level not to exceed the lesser between:
  - (i) the most-favoured-nation (MFN) applied rate of duty in effect at the time the measure is applied, and
  - (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement<sup>8-1</sup>.

#### ARTICLE 8.3 : STANDARDS FOR A SAFEGUARD MEASURE

1. A Party may adopt a safeguard measure only during the period necessary to prevent or remedy the serious injury, or threat thereof, and facilitate adjustment. This period shall not exceed two (2) years, which may be extended for an additional term of up to one (1) year. The initial period includes the term of any provisional measure applied.

2. Subject to paragraph 1, a Party may extend the period of a safeguard measure if the competent investigating authority determines, in accordance with the procedures set out in Article 8.4 (Safeguard Procedures), that the measure continues to be necessary to prevent or

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<sup>8-1</sup> The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

remedy serious injury, or threat thereof, and to facilitate adjustment, and that there is evidence that the domestic industry is adjusting.

3. In order to facilitate adjustment in the case where the expected duration of a safeguard measure is more than one (1) year, the Party applying the measure shall progressively liberalize it at regular intervals during the remainder of the period of application of the safeguard measure.

4. A party shall not apply a safeguard measure more than once on the same good until a similar period as the duration of the initial safeguard measure has elapsed commencing from the termination of the earlier safeguard measure.

5. On the termination of a safeguard measure, the Party that has imposed the measure shall:

- (a) apply the rate of customs duty set out in its tariff schedule as specified in Annex 2A (Peru Tariff Schedule) or Annex 2B (Singapore Tariff Schedule), as relevant for the good, as if such measure had never been applied; or
- (b) eliminate the tariff in equal annual stages ending on the date set out in its tariff schedule as specified in Annex 2A (Peru Tariff Schedule) or Annex 2B (Singapore Tariff Schedule), as relevant for the good, for the elimination of the tariff.

#### ARTICLE 8.4: SAFEGUARD PROCEDURES

##### **Initiation of safeguard procedure**

1. A Party may initiate a safeguard procedure under this Chapter when a company or companies representative of the domestic industry producing a like or directly competitive good with an imported good, or on their behalf, an entity or association representing them (hereinafter referred to as “the petitioner(s)”) directly present a claim to the Party.

2. The claim shall contain the following information:

- (a) the petitioner(s)’ name, address, facsimile, telephone and electronic mail;
- (b) the percentage of domestic production of the like or directly competitive good accounted for by the petitioner(s);
- (c) a detailed description of the good concerned and of its like

or directly competitive goods, tariff classification, applied tariff, technical characteristics and uses, as well as a brief description of its production process;

- (d) information relative to the increased imports (volume, price and country of origin) of the imported good concerned, in absolute terms, as well as in relation to total import, and relative to domestic industry for the last thirty-six (36) months for which official statistics are available;
- (e) evidence enabling the evaluation of the existence of serious injury, or threat thereof, caused by the imports of the good concerned, for the last thirty-six (36) months for which information is available, such as:
  - (i) a description of the serious injury, or threat thereof;
  - (ii) information relative to production, sales in the domestic market and foreign sales, capacity and capacity utilization, productivity, employment, inventories of the domestic industry, of the like or directly competitive good or goods;
  - (iii) the production cost structure of the domestic industry for the good or the like or directly competitive goods, specifying the share of the total cost accounted for by imported inputs or raw materials;
  - (iv) profit and loss statements of the representative firms in the domestic industry and accounting information relative to the good under investigation;
  - (v) price data for the domestic and the imported goods, as well as information relative to the nationalization costs of the imported good enabling a reasonable comparison between the price of the domestic and imported good in the same level of commercialization; and
  - (vi) any other information that supports the application of the safeguard measure;
- (f) an enumeration and description of alleged causes of the serious injury, or threat thereof, and a summary of the basis for the assertion that increased imports, either actual or relative to domestic production, of the imported good are causing or threatening to cause serious injury, supported by

pertinent data; and

- (g) identification and justification of confidential information, and non-confidential summaries thereof. If it is indicated that such information cannot be summarized, then the petitioner(s) should furnish the reasons why such a summary cannot be provided.

### **Notice Requirement**

3. Upon initiation of a safeguard procedure under this Chapter, and in order to comply with paragraph 1 of Article 8.5 (Notification and Consultation), the competent investigating authority shall publish a notice, identifying the name of the petitioner(s), the imported good forming the subject-matter of the safeguard procedure, its tariff classification, the deadline for the final determination, and the name, address, telephone and electronic mail address of the competent investigating authority.

### **Confidential Information**

4. Any information provided by the parties to an investigation classified as confidential, subject to prior justification, will be treated as such by the competent investigating authority. Information which shall be considered confidential due to its nature includes such information which, if disclosed, would provide a significant advantage for a competitor, commercial or otherwise, or could have a significantly negative impact on the person providing the information, in accordance with the provisions of each Party's domestic legislation.

### **Evidence of Injury and Causation**

5. For the purpose of determining the serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the competent investigating authority shall analyze, among other matters, information relative to the increased imports of the good under investigation, in absolute and relative terms, the share of the domestic market taken by the increased imports, the changes in the sales, production and productivity levels, the utilization of capacity, exports, changes in prices and inventories, capital generating capacity, profits or losses, wages and employment. None of these isolated factors, nor several of them in conjunction, will necessarily be sufficient for reaching a decisive conclusion.

6. The competent investigating authority shall not make an affirmative determination of serious injury, or threat thereof, unless the investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and serious injury, or threat thereof. Where factors other than

increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

### **Deliberation and Report**

7. Before making an affirmative determination in a safeguard procedure under this Chapter, the competent investigating authority shall have a maximum term of six (6) months, commencing from the date of initiation of the procedure, to gather, receive, examine and verify the relevant information, hold a public hearing, and provide the opportunity for all interested parties to prepare and submit their views, and prepare the corresponding report.

8. The report shall contain all relevant information, including evidence of serious injury, or threat thereof, caused by the increased imports, the precise description of the good concerned and the measure to be adopted, the proposed date for the introduction of the measure, its expected duration and, if applied, the schedule for its progressive liberalization.

### ARTICLE 8.5: NOTIFICATION AND CONSULTATION

1. A Party shall promptly notify the other Party in writing upon:

- (a) initiating a safeguard procedure under this Chapter,
- (b) adopting a provisional safeguard measure under Article 8.7 (Provisional Safeguards); or
- (c) adopting the determination to apply or extend a safeguard measure.

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

### ARTICLE 8.6 : GLOBAL ACTIONS

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

2. This Agreement does not confer any additional rights or obligations upon the Parties regarding actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards. When a Party decides to adopt a safeguard measure in accordance with Article

XIX of GATT 1994 and the WTO Agreement on Safeguards, that Party may exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury, or threat thereof.

3. Where the Party's imports represent less than 5 per cent (5%) of the total volume of imports of that good, such imports shall not be considered part of the substantial cause of serious injury, or threat thereof.

4. No Party may apply, with respect to the same good, at the same time:

- (a) a safeguard measure under this Chapter; and
- (a) a measure under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

#### ARTICLE 8.7 : PROVISIONAL SAFEGUARDS

1. In critical circumstances where any delay may result in irreparable injury to a domestic industry producing a like or directly competitive good, the Party applying a safeguard measure in accordance with Article 8.2 (Imposition of a Safeguard Measure) may adopt a provisional safeguard measure pursuant to a preliminary determination that clear evidence exists demonstrating that the increased imports of the imported good have caused, or threaten to cause, serious injury to a domestic industry producing a like or directly competitive good. Immediately after adopting the provisional safeguard measure, the affected Party may request consultations in accordance with paragraph 2 of Article 8.5 (Notification and Consultation).

2. A provisional safeguard measure may take any of the forms set out in paragraph 2 of Article 8.2 (Imposition of a Safeguard Measure). The duration of a provisional safeguard measure may not exceed one hundred and eighty (180) days. Where the competent investigating authority has determined that increased imports have not caused or threatened to cause serious injury to the domestic industry producing a like or directly competitive good, the guarantees or the perceived funds arising from the imposition of provisional measures shall be promptly released or refunded, as the case may be.

#### ARTICLE 8.8 : COMPENSATION

1. A Party applying a safeguard measure for an overall period beyond two (2) years shall, in consultation with the other Party, provide 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 during the period of extension of the measure beyond the aforementioned two (2) years. The Party applying the safeguard measure shall provide opportunity for such consultations no later than thirty (30) days after the decision to extend the measure. Such consultations shall take place prior to the effective date of the extension.

2. If the Parties are unable to reach agreement on compensation within thirty (30) days of 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. The exporting Party shall notify the other Party in writing in the English language at least thirty (30) days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.