

**DRAFT**  
**SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY**  
**MARCH 1, 2004**

**CHAPTER NINE**  
**SAFEGUARDS**

**ARTICLE 9.1 : IMPOSITION OF A SAFEGUARD MEASURE**

During the transition period, 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 originating good from the other Party constitute a substantial cause of serious injury or threat thereof, to a domestic industry producing a like or directly competitive good, such Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement for the good;
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of
  - (i) the most-favoured-nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and
  - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the lesser of:
  - (i) the MFN applied rate of duty that was in effect on the good for the immediately preceding corresponding season; or
  - (ii) the MFN applied rate of duty that was in effect on the good on the day immediately preceding the date of entry into force of this Agreement.

**ARTICLE 9.2 : CONDITIONS AND LIMITATIONS**

Each Party shall apply the following conditions and limitations with regard to a safeguard measure:

**DRAFT**  
**SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY**  
**MARCH 1, 2004**

1. A Party shall notify the other Party in writing upon initiation of an investigation described in paragraph 2 and shall consult with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on compensation as set out in Article 9.4. If a Party takes a provisional measure pursuant to Article 9.3, the Party shall also notify the other Party prior to taking such measure, and shall initiate consultations with the other Party immediately after such measure is taken.
2. A Party shall take the measure only following an investigation by that Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.
3. In the investigation described in paragraph 2, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement; and to this end, Article 4.2(a) is incorporated into and made a part of this Agreement, *mutatis mutandis*.
4. Each Party shall ensure that an investigation is in all cases completed within one year of its date of initiation.
5. 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 and to facilitate adjustment;
  - (b) for a period exceeding two years; except that the period may be extended by up to two years if the competent authorities determine, in conformity with the procedures set out in paragraphs 1 through 4, 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; or
  - (c) beyond the expiration of the transition period, except with the consent of the Party against whose originating good the measure is taken.
6. Neither Party shall impose a safeguard measure more than once on the same good.
7. Where the expected duration of the measure is over one year, the importing Party shall ensure that the measure is progressively liberalized at regular intervals.

**DRAFT**  
**SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY**  
**MARCH 1, 2004**

8. When a Party terminates a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 2-B (Tariff Elimination) of this Agreement, would have been in effect one year after the initiation of the measure. Beginning on January 1 of the year following the termination of the action, the Party that has applied the measure shall:

- (a) apply the rate of duty set out in the Party's Schedule to Annex 2-B (Tariff Elimination) of this Agreement as if the safeguard measure had never been applied; or
- (b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 2-B (Tariff Elimination) of this Agreement for the elimination of the tariff.

**ARTICLE 9.3 : PROVISIONAL SAFEGUARD MEASURES**

In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a safeguard measure on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The duration of such provisional measure shall not exceed 200 days, during which time the requirements of Articles 9.2.2 and 9.2.3 shall be met. Any tariff increases shall be promptly refunded if the investigation described in Article 9.2.2 does not result in a finding that the requirements of Article 9.1 are met. The duration of any provisional measure shall be counted as part of the period described in Article 9.2.5.

**ARTICLE 9.4 : COMPENSATION**

1. The Party applying a safeguard measure shall 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. Such consultations shall begin within 30 days of the imposition of the measure.

2. If the Parties are unable to agree on compensation within 30 days after the consultations commence, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the other Party that have trade effects substantially equivalent to the safeguard measure.

**DRAFT**  
**SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY**  
**MARCH 1, 2004**

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 later of: (a) the termination of the safeguard measure, or (b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 2-B.

**ARTICLE 9.5 : GLOBAL SAFEGUARD MEASURES**

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to global safeguard measures, except that a Party taking a global safeguard measure 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.

**ARTICLE 9.6 : DEFINITIONS**

For the purposes of this Chapter:

1. **domestic industry** means the producers as a whole of the like or directly competitive product operating in the territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;
2. **global safeguard measure** means a measure applied under Article XIX of GATT 1994 and the WTO Agreement on Safeguards;
3. **safeguard measure** means a safeguard measure described in Article 9.1;
4. **serious injury** means a significant overall impairment in the position of a domestic industry;
5. **substantial cause** means a cause which is important and not less than another cause;
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; and
7. **transition period** means the ten-year period following entry into force of this Agreement, except that for any good for which the Schedule in Annex 2-B (Tariff

**DRAFT**  
**SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY**  
**MARCH 1, 2004**

Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, **transition period** shall mean the tariff elimination period for the good.