

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

CHAPTER EIGHT
SAFEGUARDS

ARTICLE 8.1: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

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;
- (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 on the good in effect for the immediately preceding corresponding season, 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.

ARTICLE 8.2: CONDITIONS AND LIMITATIONS

The following conditions and limitations shall apply with regard to a measure described in Article 8.1:

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 8.5.
2. A Party shall take a measure only following an investigation by that Party's competent authorities in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO

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Agreement on Safeguards 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 WTO Agreement on Safeguards; and to this end, Article 4.2(a) is incorporated into and made a part of this Agreement, *mutatis mutandis*.
4. No measure may be maintained against a good:
 - (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 three years, except in the case provided for under Article 8.3 (Extension); or
 - (c) beyond five years after the Party taking the measure must eliminate customs duties on that good pursuant to Annex V (Goods Schedule); except with the consent of the Party against whose originating good the measure is taken.
5. No measure may be applied against the same good on which a measure has been taken under this Chapter.
6. Where the expected duration of the measure is over one year, the importing Party shall progressively liberalize it at regular intervals during the period of application.
7. Upon the termination of the measure, the rate of customs duty shall be the rate that would have been in effect but for the measure.

ARTICLE 8.3: EXTENSION

If the competent authorities of a Party determine, in conformity with the procedures set out in Article 8.2, that a 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, the Party may extend the application of the safeguard measure for an additional two years.

ARTICLE 8.4: PROVISIONAL MEASURES

In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a measure described in Article 8.1(a), (b) or (c) 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 8.2.2 and 8.2.3 shall be met. Any tariff increases shall be

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promptly refunded if the investigation described in Article 8.2.2 does not result in a finding that the requirements of Article 8.1 are met. The duration of any provisional measure shall be counted as part of the period described in Article 8.2.4(b).

ARTICLE 8.5: COMPENSATION

The Party taking a measure described in Article 8.1 shall endeavor to 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. If the Parties are unable to agree on compensation within 30 days from the date the Party announces a decision to take the measure, the Party against whose good the measure is taken may take tariff action having trade effects substantially equivalent to the measure described in Article 8.1. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects, and in any event, only while the measure under Article 8.1 is being applied.

ARTICLE 8.6: GLOBAL SAFEGUARD MEASURES

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

ARTICLE 8.7: DEFINITIONS

For purposes of this Chapter:

competent authorities means (a) for Morocco, the Ministry of Foreign Trade, and (b) for the United States, the International Trade Commission;

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 product constitutes a major proportion of the total domestic production of that product;

global safeguard measure means a measure applied under Article XIX of GATT 1994 and the WTO Agreement on Safeguards;

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; and

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.