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Chapter Eight

Trade Remedies

Section A : Safeguard Measures

Article 8.1: Imposition of a Safeguard Measure

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a duty pursuant to this Agreement¹, an originating good is being imported into the Party's territory 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 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 of
 - (i) the most-favored-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.²

3. A Party shall apply a safeguard measure to imports of an originating good³ irrespective of their source.

4. No Party may apply a safeguard measure against an originating good of another Party as long as the exporting Party's share of imports of the originating good in the importing Party does

¹ The Parties note that many of Peru's products received duty-free treatment under the U.S. Generalized System of Preferences and the U.S. Andean Trade Preference Act, as amended, prior to the date of entry into force of this Agreement.

² The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

³ For greater certainty, goods imported into one Andean Party from another Andean Party under an Andean Community certificate of origin shall not be subject to safeguard measures under this Chapter.

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not exceed three percent, provided that Parties with less than three percent import share collectively account for not more than nine percent of total imports of such originating good.

Article 8.2: Standards for a Safeguard Measure

1. No 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 authority determines, in conformity with the procedures set out in Article 8.3, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting; or
 - (c) beyond the expiration of the transition period.
2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
3. A Party may not apply a safeguard measure more than once on the same good.
4. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 2.3 (Tariff Elimination), would have been in effect one year after the imposition of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:
 - (a) apply the rate of duty set out in the Party's Schedule to Annex 2.3 (Tariff Elimination) 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 2.3 (Tariff Elimination) for the elimination of the tariff.

Article 8.3: 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; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

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2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement; and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 8.4: Notification and Consultation

1. A Party shall promptly notify the other Parties, in writing on:

- (a) initiating a safeguard proceeding under this Chapter;
- (b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.1; and
- (c) taking a decision to apply or extend a safeguard measure.

2. A Party shall provide to the other Parties a copy of the public version of the report of its competent investigating authority required under Article 8.3(1).

3. On request of a Party whose good is subject to a safeguard proceeding under this Chapter, the Party conducting that proceeding shall enter into consultations with the requesting 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 proceeding.

Article 8.5: Compensation

1. A Party applying a safeguard measure shall, after consultations with each Party against whose good the measure is applied, 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. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalizing compensation within 30 days, any Party against whose good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the Party applying the safeguard measure 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 concessions under paragraph 2 shall terminate on the later of:

- (a) the termination of the safeguard measure, or

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- (b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 2.3 (Tariff Elimination).

Article 8.6: Global Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement except that a Party taking a global safeguard measure may exclude imports of an originating good of another Party if such imports are not a substantial cause of serious injury or threat thereof.
3. No Party may apply, with respect to the same good, at the same time:
 - (a) a safeguard measure; and
 - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Article 8.9: Definitions

For purposes of this Section:

competent investigating authority means (a) for Peru the Dirección Nacional de Integración y Negociaciones Comerciales Internacionales del Ministerio de Comercio Exterior y Turismo and (b) for the United States, the International Trade Commission;

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

safeguard measure means a measure described in Article 8.1.2;

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

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transition period means the 10 year period beginning on the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 2.3 (Tariff Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of more than 10 years, **transition period** means the tariff elimination period for the good set out in that Schedule.

Section B : Antidumping and Countervailing Measures

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.
2. No provision of this Agreement, including the provisions of Chapter Twenty-One (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures.