

CHAPTER 5

SAFEGUARDS

PART I

DEFINITIONS

ARTICLE 501

Definitions

For purposes of this Chapter:

- (a) “domestic industry” means, with respect to an imported good, the producers as a whole of the like or directly competitive good 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;
- (b) “provisional measure” means a provisional safeguard measure described in Article 505;
- (c) “safeguard measure” means a safeguard measure described in Article 502;
- (d) “special safeguard measure” means a special safeguard measure described in Article 509;
- (e) “serious damage” means a significant overall impairment in the position of a domestic industry; and
- (f) “transition period”, in relation to a particular good, means the period from the entry into force of this Agreement until the date on which the customs duty on that good is to be eliminated in accordance with Annex 2.

PART II

TRANSITIONAL SAFEGUARD MEASURES

ARTICLE 502

Application of a Safeguard Measure

If, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of a Party is being imported into the other Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the other Party may, to the minimum extent necessary to prevent or remedy serious damage and facilitate adjustment, apply a safeguard measure, consisting of:

- (a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the good; or
- (b) an increase of 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 customs duty in effect at the time the action is taken, or
 - (ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

ARTICLE 503

Scope and Duration of Transitional Safeguard Measures

1. A Party shall apply a safeguard measure only for such period of time as may be necessary to prevent or remedy serious damage and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to two years provided that the conditions of this Chapter are met. The total period of a safeguard measure, including any extensions thereof, shall not exceed six years. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate within two years following the end of the transition period for such good. No new safeguard measure may be applied to a good after that date.

2. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the application of the measure, including at the time of any extension.

3. A Party shall not apply a safeguard or provisional measure more than once on the same good until a period of time has elapsed following the termination of the earlier safeguard or provisional measure equal to the duration of the earlier measure.

4. A Party may not apply a safeguard or provisional measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement, the WTO Agreement on Textiles and Clothing, or any other relevant provisions in the WTO Agreement, nor may a Party continue to maintain a safeguard or provisional measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement, the WTO Agreement on Textiles and Clothing or any other relevant provisions in the WTO Agreement.

5. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 2 on the date of termination as if the safeguard measure had never been applied.

ARTICLE 504

Investigation

1. A Party may apply or extend a safeguard measure only following an investigation by the Party's competent authorities to examine the effect of increased imports of an originating good of the other Party on the domestic industry, as reflected in changes in such relevant economic variables as production, productivity, levels of sales, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which is necessarily decisive. When factors other than increased imports of an originating good of the other Party resulting from the reduction or elimination of a customs duty pursuant to this Agreement are simultaneously causing damage to the domestic industry, such damage shall not be attributed to such increased imports.

2. An investigation under Paragraph 1 shall only take place pursuant to procedures previously established and made public in consonance with Chapter 14 of this Agreement. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

3. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

ARTICLE 505

Provisional Measures

1. In highly unusual and critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious damage. The duration of such a provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 502, 503 and 504 shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 503 (1). Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Paragraph 1 of Article 504 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious damage to a domestic industry. In such a case, the Party that applied the measure shall apply the rate of customs duty set out in its Tariff Schedule as specified in Annex 2 as if the provisional measure had never applied.

2. In determining whether such highly unusual and critical circumstances exist, a Party shall have regard to the rate of increase of imports of an originating good of the other Party, both in absolute and relative terms, and the overall level of the Party's imports of the good from the other Party as a share of total imports of the good, as a result of the reduction or elimination of a duty on the good pursuant to this Agreement.

ARTICLE 506

Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, on:
 - (a) initiating an investigation under Article 504;
 - (b) making a finding of serious damage or actual threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty on the good pursuant to this Agreement;
 - (c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and
 - (d) taking a decision to modify a safeguard measure previously applied.
2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 504 immediately as it is available.
3. In making a notification pursuant to Paragraph 1, the Party applying or extending a safeguard measure shall also provide evidence of serious damage or actual threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement, a precise description of the good involved, the details of the proposed measure including as appropriate the grounds for not selecting the measure described in Article 502 (a) , the date of introduction, duration, and timetable for progressive liberalisation of the measure, if applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall provide additional information as the other Party may consider necessary.
4. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, *inter alia*, reviewing the information provided under Paragraph 3, exchanging views on the measure, and reaching an agreement on compensation as set forth in Article 507 (1).

5. Where a Party applies a provisional measure referred to in Article 505, on request of the other Party, consultations shall be initiated immediately after such application.

6. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

ARTICLE 507

Compensation

1. A Party extending a safeguard measure for an overall period beyond three years shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalising compensation in the form of substantially equivalent concessions during the period of extension of the measure beyond the aforementioned three years. Such consultations shall begin within 30 days of the decision to extend the measure and, in accordance with Article 506 (4), shall take place prior to the extension.

2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party extending 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 508

Global safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards and any other relevant provisions in the WTO Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to such global safeguard measures, except that a Party taking such a measure may exclude imports of an originating good of the other Party from the action if such imports are not a cause of serious injury or threat thereof or of serious damage or actual threat thereof or of any other such factor as may be provided in Article XIX of GATT 1994 and the WTO Agreement on Safeguards, and any other relevant provisions in the WTO Agreement.
2. A Party considering the imposition of a global safeguard measure on an originating good of the other Party shall initiate consultations with that Party as far in advance of taking any such measure as practicable.

PART III

SPECIAL SAFEGUARD MEASURES FOR CERTAIN SENSITIVE AGRICULTURAL PRODUCTS

ARTICLE 509

Standards for a Special Safeguard Measure

1. A Party may, in exceptional circumstances, apply a special safeguard measure to a limited number of specified sensitive agricultural goods, as set down in Annex 5.
2. The Parties shall endeavour to apply special safeguards measures in a manner that is consistent with their commitment under the terms of this Agreement to promote the expansion of bilateral trade in agricultural goods.
3. A Party may impose a special safeguard measure on a good only during the period set down in Annex 5 for that good.

4. Such a special safeguard measure may be applied to imports of an agricultural good listed in Annex 5 if the volume of imports of that originating good of the other Party entering the customs territory of the Party during any given calendar year exceeds the specified volume trigger level for that year. The applicable trigger levels are set out in Annex 5.
5. If the conditions in Paragraph 4 are met, a Party may increase the rate of customs duty applicable to the good for the remainder of that calendar year through the application of the customs duty for such good at the current MFN rate or the base rate, whichever is lower.
6. Any supplies of the good in question which were *en route* on the basis of a contract settled before the additional customs duty is imposed under the terms of this Article shall be exempted from any such additional customs duty, provided that they may be counted in the volume of imports of the good in question during the following year for the purposes of triggering the provisions of Paragraph 4 in that year.
7. Each Party shall apply any special safeguard measure in a transparent manner. A Party applying a special safeguard measure shall give notice in writing, including relevant data, to the other Party as far in advance as may be practicable and in any event within ten working days of the implementation of such action.
8. Upon request, the Party imposing the measure shall consult and cooperate in exchanging information as appropriate with the other Party with respect to the conditions of application of the measure.
9. A Party may not apply a special safeguard measure on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement or any other relevant provisions in the WTO Agreement or to a measure set forth in Articles 502-508, nor may a Party continue to maintain a special safeguard measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement or any other relevant provisions in the WTO Agreement, or to any measure set forth in Articles 502-508.
10. No later than three years following the entry into force of this Agreement, the Parties shall review the operation of this Article, including the appropriateness of the list and trigger levels, including the growth factors set down in Annex 5. The review shall take into account relevant international trade developments.
11. In the event that a Party enters into an agreement or arrangement with a non-Party following entry into force of this Agreement that does not provide for special safeguard measures on a good or goods covered in the relevant section of Annex 5 of this Agreement, and where the non-Party is a substantial supplier of the good or goods, the Parties shall, by mutual consent, enter into consultations on the scope for that good or those goods to be withdrawn from Annex 5.