

## Chapter VI

### Trade Remedies

#### Section 1

#### Bilateral Safeguards

##### Article 44 Imposition of a Bilateral Safeguard Measure

1. If, as a result of the reduction or elimination of a duty provided for in this Agreement, a product benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the 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 product, the importing Party may impose a safeguard measure described in paragraph 2, during the transition period only.

2. If the conditions in paragraph 1 are met, a Party may, to the extent as may be necessary to prevent or remedy serious injury, or threat thereof, and to facilitate adjustment:

(a) suspend the further reduction of any rate of duty on the product provided for under this Agreement; or

(b) increase the rate of duty on the product to a level not to exceed the lesser of

i) the MFN applied rate of duty in effect at the time the action is taken; or

ii) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.<sup>4</sup>

##### Article 45 Standards for a Definitive Bilateral Safeguard

1. A Party may apply a definitive safeguard measure for an initial period of one year, with an extension not exceeding one year. Regardless of its duration, such measure shall terminate at the end of the transition period.

2. Neither Party may impose a safeguard measure more than once on the same product.

3. Notwithstanding paragraph 2, in the case of a product for which the transition period is over five years, a Party may impose a safeguard measure for a second time on the same product, provided that a period equal to that of the previously imposed measure has elapsed.

4. Neither Party may impose a safeguard measure on a product that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a product that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

5. On the termination of a safeguard measure, the rate of duty shall be the duty set out in the Party's schedule to Annex 1 of this Agreement as if the measure had never been applied.

##### Article 46 Investigation Procedures and Transparency Requirements

1. The importing Party may take a safeguard measure under this Section only following an investigation by its competent authorities and in accordance with Article 3 of the Safeguards Agreement; and to this end Article 3 of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. In determining whether increased imports of an originating product of the other Party have caused serious injury or are threatening to cause serious injury to a domestic industry, the competent authority of the importing Party shall,

based on objective evidence, evaluate the effect of the increased imports on the domestic industry by considering the following economic factors: the rate and amount of the increase in imports of the originating product, the share of the domestic market taken by the increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. The list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3. When factors other than increased imports of an originating product of the other Party resulting from the reduction or elimination of an import custom duty pursuant to this Agreement are simultaneously causing injury to the domestic industry, the injury caused by other factors shall not be attributed to the increased imports of the product from the other Party.

#### **Article 47      Provisional Measures**

In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days. Such a measure should take the form of tariff increase to be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension of a definitive measure.

#### **Article 48      Notification**

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

- (a) initiating an investigation;
- (b) taking a provisional safeguard measure;
- (c) making a finding of serious injury or threat thereof caused by increased imports;
- (d) taking a decision to impose or extend a definitive measure; and
- (e) taking a decision to modify a measure previously undertaken.

2. In making the notifications referred to in subparagraphs (d) and (e) of paragraph 1, the Party applying the measure shall provide the other Party all pertinent information, such as a precise description of the product involved, the proposed measure, the grounds for introducing such a measure, the proposed date of introduction and its expected duration. The notifying Party shall provide a courtesy non-official English translation of the notification.

3. A Party applying a provisional or definitive measure or extending a safeguard measure shall provide adequate opportunity for exchange of information and views on the measure with the other Party.

#### **Article 49      Compensation**

1. Upon the request of the Party whose product is subject to a safeguard measure, the Party taking a safeguard measure shall hold consultations in order 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.

2. If the Parties are unable to reach agreement on compensation within 45 days after the request under paragraph 1, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The right of suspension referred to in this paragraph shall not be exercised for the first year that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Chapter.

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 50      Definitions**

For purposes of this Section:

**competent authority** means:

(a) in the case of China, Ministry of Commerce, or its successor; and

(b) in the case of Chile, the National Commission in Charge of the Investigation of the Existence of Price Distortions in Imported Products (*Comisión Nacional Encargada de Investigar la Existencia de Distorsiones en el Precio de las Mercaderías Importadas*), or its successor;

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

**Safeguards Agreement** means the *Agreement on Safeguards*, which is part of the WTO Agreement;

**safeguard measure** means a safeguard measure described in paragraph 2 of Article 44;

**serious injury** means a significant overall impairment in the position of a domestic industry;

**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

**transition period** means the three year period beginning on the date of entry into force of this Agreement, except in the case of a product where the liberalization process lasts five or more years, the transition period shall be equal to the period in which such a product reaches zero tariff according to the Schedule to Annex 1 of this Agreement.

### **Section 2**

#### **Global Safeguards, Antidumping and Countervailing**

##### **Article 51      Global Safeguard Measures**

1. The Parties maintain their rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement as defined in Article 50.

2. Actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement as defined in Article 50 shall not be subject to Chapter X of this Agreement.

##### **Article 52      Anti-Dumping and Countervailing Duty Matters**

1. The Parties maintain their rights and obligations under the *Agreement on Implementation of Article VI of the GATT 1994* and the *Agreement on Subsidies and Countervailing Measures*, which are parts of the WTO Agreement.

2. Antidumping actions taken pursuant to Article VI of GATT 1994 and the *Agreement on Implementation of Article VI of the GATT 1994* or countervailing actions taken pursuant to Article VI of GATT 1994 and the *Agreement on Subsidies and Countervailing Measures* shall not be subject to Chapter X of this Agreement.