

CHAPTER 6

BILATERAL SAFEGUARD MEASURES

SECTION A

DEFINITIONS

ARTICLE 6.1

For the purposes of this Chapter:

- (a) "competent investigating authority" means:
 - (i) in the case of Singapore, the competent investigating authority, which will be appointed in the event of a bilateral safeguard investigation; and
 - (ii) in the case of Signatory MERCOSUR States, the Ministerio de Economía or its successor in Argentina; Ministério do Desenvolvimento, Indústria, Comércio e Serviço or its successor in Brazil; Ministerio de Industria y Comercio or its successor in Paraguay; and Política Comercial del Ministerio de Economía y Finanzas or its successor in Uruguay;
- (b) "domestic industry" means the producers as a whole of the like or directly competitive products operating within the territory of the State 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;
- (c) "interested parties" shall include:
 - (i) exporters or foreign producers or importers of a product subject to investigation, or a

trade or business association, a majority of the members of which are producers, exporters or importers of such product;

- (ii) the government of the exporting State Party; and
 - (iii) producers of the like or directly competitive product in the importing State Party or a trade and business association, a majority of the members of which produces the like or directly competitive product in the territory of the importing State Party.
- (d) "serious injury" means a significant overall impairment in the position of a domestic industry;
- (e) "threat of serious injury" means serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility; and
- (f) "transition period" means:
- (i) the total period of the Tariff Liberalisation Schedule plus an additional five-year period for goods for which the Tariff Liberalisation Schedule of the State Party applying the measure provides for tariff elimination in less than 8 (eight) years; and
 - (ii) the total period of the Tariff Liberalisation Schedule plus an additional three-year period for goods for which the Tariff Liberalisation Schedule of the State Party applying the measure provides for tariff elimination in 8 (eight) or more years.

SECTION B

CONDITIONS FOR THE APPLICATION OF BILATERAL SAFEGUARD MEASURES

ARTICLE 6.2

1. Considering the reduction or elimination of a customs duty after the entry into force of this Agreement, a State Party may, in exceptional circumstances, apply bilateral safeguard measures against another State Party under the conditions established in this Section, when the imports of a

product under preferential terms originating in such State Party have increased in such quantities, absolute or relative to domestic production of the importing State Party, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing State Party.

2. The bilateral safeguard measure shall be applied only to the extent necessary to prevent or remedy serious injury or threat thereof.
3. Bilateral safeguard measures shall only be applied following an investigation by the competent investigating authorities of the importing State Party under the procedures established in this Chapter.
4. A State Party shall not apply, with respect to the same good, at the same time:
 - (a) a safeguard measure in accordance with paragraph 1; and
 - (b) a measure under Article XIX (Emergency Action on Imports of Particular Products) of GATT 1994 and the Safeguards Agreement or a measure with equivalent effect.

ARTICLE 6.3

A State Party shall not apply, extend or keep in force a bilateral safeguard measure beyond the expiration of the transition period.

ARTICLE 6.4

Bilateral safeguard measures shall only be applied between Singapore on the one side and individual Signatory MERCOSUR States on the other. Singapore may conduct bilateral safeguard investigations on exports of the same good originating in more than one Signatory MERCOSUR States simultaneously, provided that the conditions established in this Section are considered for each one of them separately.

ARTICLE 6.5

Bilateral safeguard measures adopted under this Chapter shall consist of:

- (a) a temporary suspension of the schedule of tariff reduction of the good concerned provided for under this Agreement; or
- (b) a reduction of the tariff preference of the product concerned so that the rate of customs duty does not exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty on the product in effect at the time the measure is taken; or
 - (ii) the base rate of customs duty referred to in the Tariff Schedules under Appendices 2-A-1 and 2-A-2 of Annex 2-A (Elimination of Customs Duties).

ARTICLE 6.6

1. Bilateral safeguard measures shall be applied only for the period necessary to prevent or remedy the serious injury and to facilitate adjustment of the domestic industry. This period shall not exceed 2 (two) years, including the period of application of any provisional measure.
2. Upon termination of the bilateral safeguard measure, the margin of preference shall be the one that would be applied to the product in the absence of the measure, according to the Tariff Elimination Schedule.

ARTICLE 6.7

1. The bilateral safeguard measure may be extended only once and for a maximum period identical to the initial period of application, provided that it has been determined, in accordance with the procedures set out in this Chapter, that the measure continues to be necessary to prevent or remedy serious injury and that the domestic industry provides evidence that it is adjusting. The measure extended shall not be more restrictive than it was at the end of the initial period. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is

over 1 (one) year, the State Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

2. No safeguard measure shall be applied again to the same product imported under the Tariff Elimination Schedule, unless a period equal to the half of the total duration of the previous measures has elapsed.

ARTICLE 6.8

1. The investigation to determine serious injury or threat thereof as a result of increased imports of a product under preferential terms shall take into consideration all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry affected, particularly the following:

- (a) the amount and rate of the increase in preferential imports of the product concerned in absolute and relative terms;
- (b) the share of the internal market taken by increased preferential imports;
- (c) the price of the preferential imports;
- (d) the consequent impact on the domestic industry of the like or directly competitive products, based on factors, including: production, productivity, capacity utilisation, inventories, sales, market share, prices, profits and losses, return on investment, cash flow and employment;
- (e) the relationship between the preferential and non-preferential imports, as well as between the increase of one and the other;
- (f) the existence of a causal link between the increased imports of the product under preferential terms and the serious injury or threat thereof to the domestic industry; and
- (g) other factors that, although not related to the evolution of preferential imports, may have a causal relationship with the injury or the threat of injury to the domestic industry in question.

2. The investigation to determine serious injury or threat thereof shall demonstrate the existence of a causal link between the increased imports of the product under preferential terms and the serious injury or threat thereof to the domestic industry.
3. When factors other than increased preferential imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased preferential imports.
4. The period of data collection for the investigation to determine serious injury or threat thereof should normally be of at least the last 36 (thirty-six) months, unless otherwise duly justified and in exceptional circumstances, and shall end as close to the date of the submission of the request as is practicable.

SECTION C

INVESTIGATION AND TRANSPARENCY PROCEDURES

ARTICLE 6.9

A State Party may only initiate an investigation for a bilateral safeguard measure upon request of the domestic industry or of a trade and business association of domestic producers of the like or directly competitive products in the importing State Party.

ARTICLE 6.10

The request to initiate an investigation shall contain at least the following information:

- (a) a description of the product: the name and description of the imported product concerned, its tariff heading and the tariff treatment in force, as well as the name and description of the like or directly competitive product;
- (b) the names and addresses of the producers or association that submit the request;

- (c) a list of all other known producers of the like or directly competitive product; and
- (d) evidence that the conditions for imposing the safeguard measure set out in Article 2(1) are met. In this respect, the request shall generally contain the following information:
 - (i) the production volume of producers submitting or represented in the application and an estimation of the production of other known producers of the like or directly competitive product;
 - (ii) the rate and amount of the increase in total and bilateral imports of the product concerned in absolute and relative terms, including at least the last 36 (thirty-six) months prior to the date of the lodging of the application, for which information is available;
 - (iii) the level of import prices during the same period; and
 - (iv) where information is available, objective and quantifiable data regarding the like or directly competitive product, on the volume of total production and of total sales on the internal market, inventories, prices for the internal market, productivity, capacity utilisation, employment, profits and losses, market share, of the requesting firms or of those represented in the request, including at least the last 36 (thirty-six) months previous to the presentation of the request, for which information is available.

ARTICLE 6.11

1. 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 investigating 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.

2. Request for confidentiality will not be granted for information regarding basic uses and characteristics of the product concerned.

3. If information regarding production, production capacity, employment, wages, volume and value of domestic sales, average price is presented on a confidential basis, the competent investigating authorities shall ensure that the petitioner or the domestic industry provides meaningful non-confidential summaries disclosing at least aggregated data or, in cases in which the disclosure of aggregated data would endanger the confidentiality of the company's data, indexes for each 12 (twelve) month period under investigation are submitted, so as to ensure the appropriate right of defense of the interested parties. In this regard, confidentiality requests should be considered in situations in which particular market or domestic industry structures so justify it. This provision does not prevent the presentation of more detailed non-confidential summaries.

ARTICLE 6.12

The period between the date of publication of the decision to initiate the investigation and the publication of the final decision shall not exceed 1 (one) year. No bilateral safeguard measures shall be applied in case the-timeframe is not observed by the competent investigating authorities.

ARTICLE 6.13

Each State Party shall establish or maintain transparent, effective and equitable procedures for the impartial and reasonable application of bilateral safeguard measures, in compliance with this Chapter.

SECTION D

PROVISIONAL BILATERAL SAFEGUARDS

ARTICLE 6.14

In critical circumstances, where delay may cause damage which would be difficult to repair, a State Party, after due notification, may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased preferential imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 (two hundred) days, during which period the requirements of this Chapter shall be met. If the final determination concludes that there was no serious injury or threat thereof to the domestic industry caused by imports under preferential terms, the increased tariff or provisional guarantee, if collected or imposed under provisional measures, shall be promptly refunded, according to the laws and regulations of the relevant State Party.

SECTION E

PUBLIC NOTICE

ARTICLE 6.15

The public notice of the initiation of an investigation for bilateral safeguard measures shall include the following information:

- (a) the name of the petitioner;
- (b) the complete description of the imported product under investigation, and its classification under the Harmonized System;
- (c) the deadline for the request for hearings and the venue where hearings shall be held;
- (d) the deadline to register as an interested party and for the submission of information, statements and other documents;
- (e) the address where the request or other documents related to the investigation can be

examined;

- (f) the name, address and e-mail address or telephone number of the institution which can provide further information; and
- (g) a summary of the facts upon which the initiation of the investigation was based, including data on imports that have supposedly increased in absolute or relative terms to total production and analysis of the domestic industry situation based on all the elements conveyed in the request.

ARTICLE 6.16

1. The public notice of the decision to apply a provisional bilateral safeguard measure, to apply or not or to extend a definitive bilateral safeguard measure shall include the following information:

- (a) the complete description of the product subject to the preferential safeguard measure, and its tariff classification under the Harmonized System;
- (b) information and evidence leading to the decision,
 - (i) the increasing or increased preferential imports, if it is the case;
 - (ii) the situation of the domestic industry, including, in the case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting;
 - (iii) the existence of a causal link between the increased preferential imports of the goods concerned and the serious injury or threat thereof to the domestic industry, if it is the case; and
 - (iv) in the case of preliminary determination, the existence of critical circumstances.;
- (c) other reasoned findings and conclusions on all relevant issues of fact and law;
- (d) a precise description of the measure to be adopted, if it is the case; and

- (e) the date of entry into force of the measure and its duration and, if applicable, a timetable for progressive liberalisation of the measure, if it is the case.

SECTION F

NOTIFICATIONS AND CONSULTATIONS

ARTICLE 6.17

1. The importing State Party shall notify the exporting State Party of:
 - (a) the decision to initiate the investigation under this Chapter;
 - (b) the decision to apply a provisional bilateral safeguard measure;
 - (c) the decision to apply or not or to extend a definitive bilateral safeguard measure; and
 - (d) the decision to modify a bilateral safeguard measure previously undertaken.
2. The decision shall be notified by the importing State Party as soon as possible and shall be accompanied by the appropriate public notice. In the case of a decision to initiate an investigation, a copy of the request to initiate the investigation shall be included in the notification.

ARTICLE 6.18

1. When a State Party has determined that the conditions to impose definitive measures are met, it should notify and at the same time invite the other State Party for consultations.
2. The notification and invitation for consultations referred to in paragraph 1 shall be made at least 30 (thirty) days before definitive measures are expected to come into force. No definitive measures shall be applied in the absence of notification.

3. The notification provided in paragraph 1 shall include:
 - (a) the data and objective information demonstrating the existence of serious injury or threat of serious injury to the domestic industry caused by the increased preferential imports;
 - (b) complete description of the imported product subject to the measure, and its classification under the Harmonized System;
 - (c) description of the measure proposed;
 - (d) the date of entry into force of the measure and its duration; and
 - (e) the period for consultations.

3. The objective of the consultations referred to in paragraph 1 shall be a mutual knowledge of the public facts and the exchange of opinions, aimed at reaching a mutually satisfactory solution. If no satisfactory solution is reached within 30 (thirty) days of the notification under paragraph 1, a State Party may apply the measure at the end of the thirty-day period. Should this be the case, the State Parties shall discuss adequate means of trade compensation for the adverse effects of the measure on their trade.

4. At any stage of the investigation, the notified State Party may request consultations with the other State Party, or any additional information that it considers necessary.