

Chapter XX

Trade Remedies

Section A Global Safeguard Measures

Article X.1 Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.
2. No Party may apply, with respect to the same product, at the same time:
 - (a) a bilateral safeguard measure; and
 - (b) a measure under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

Section B Bilateral Safeguard Measures

Article X.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 customs duty pursuant to this Agreement, as a result of unforeseen developments in conjunction with the existence of a preferential tariff under this agreement an originating product 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 product.
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 product; or
 - (b) increase the rate of duty on the product 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 base tariff rate as provided in the schedule to Annex 3(Tariff Elimination).¹

Article X.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 2 years; except that the period may be extended by up to 1 year if the competent authorities determine, in conformity with the procedures set out in Article X.4, that the 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;
 - (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. On the termination of a safeguard measure, the rate of duty shall be the customs duty set out in the Party's Schedule to Annex () as if the safeguard measure has never been applied.

Article X.3 Investigation Procedures and Transparency Requirement

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 WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made 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 follow the rules in Article 4.2(a) and (b) of the WTO Agreement on Safeguards; and to this end, Articles 4.2(a) and (b) of the WTO Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.

¹ The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

Article X.4 Provisional Safeguard Measures

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that the increased imports have caused or are threatening to cause serious injury to a domestic industry.

2. The duration of the provisional safeguard measure may not exceed 180 days and will adopt any of the forms set out in Articles X.1.2 of this Chapter during which the pertinent requirements of Article X.1 and X.3 shall be met. The guarantees or the received funds arising from the imposition of a provisional safeguard measure shall be promptly liberated or refunded, as it corresponds, when the investigation does not determine that increased imports have caused or threaten to cause serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the period of a safeguard measure.

Article X.5 Notification and Consultations

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

- (a) initiating an investigation under this Section;
- (b) applying a provisional measure; and
- (c) taking a final decision on the application of a safeguard measure.

2. A Party shall provide to the other Party a copy of the report of its competent investigating authority required under Article X.3.1.

3. On request of a Party whose product is subject to a safeguard investigation under this chapter, the Party conducting that investigation shall enter into consultations with the other 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 investigation.

4. Where a Party applies a provisional safeguard measure referred to in Article X.4, on request of the other Party, consultations shall be initiated after applying such a provisional measure.

Article X.6 Compensations

1. A Party applying a safeguard measure for an overall period beyond two (2) years shall, in consultation with the other Party, 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

during the period of extension of the measure beyond the aforementioned two (2) years. The Party applying the safeguard measure shall provide opportunity for such consultations no later than 30 days after the decision to extend the measure. Such consultations shall take place prior to the effective date of the extension.

2. If the Parties are unable to reach agreement on compensation within thirty (30) days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. The exporting Party shall notify the other Party in writing in the English language 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 date of the termination of the safeguard measure.

Article X.7 Definitions

For purposes of this Section:

competent investigating authority is: (a) for China, *the Ministry of Commerce*, or its successor; and (b) for Peru, the *Ministry of Foreign Trade and Tourism*, or its successor.

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

safeguard measure means a measure described in Article X.1.2.

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.

Substantial cause means a cause which is important and not less than any other cause;

directly competitive product refers to the product which, having different physical characteristics and composition to those of the imported product, fulfills the same functions of the latter, satisfies the same needs, and is commercially substitutable.

like product refers to the identical product, that is, the product that is the same in all aspects as the imported product, or to another product which, in spite of not being the same in all aspects, has very like characteristics to those of the imported product.

terms will be computed in natural or calendar days, except as otherwise stated.

transition period, means 8 years for the products that eliminate all tariff from the entry into force of the agreement; means 10 years for the products for which the tariff elimination period is between 5-8 years, according to Annex XX (Peru Tariff Schedule) or XX (China Tariff Schedule), as the case may be; and for the products for which the tariff elimination period is 10 years or more, transition period means the tariff elimination period for the product set out in each Party's Tariff Schedule plus 5 years.

Section C

Antidumping and Countervailing Measures

Article X.1: Antidumping and Countervailing Measures

1. The Parties agree to abide fully by the provisions of the *WTO Agreement on Implementation of Article VI of the GATT 1994*, the *WTO Agreement on Subsidies and Countervailing Measures*.

2. The Parties agree to observe the following practices in anti-dumping cases between them:

- (a) immediately following the receipt of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of products from the other Party, the Party that has received the properly documented application shall immediately notify the other Party of the receipt of the application.
- (b) during any anti-dumping investigation involving the Parties, the Parties agree to conduct all notification letters between the Parties in English.
- (c) a Party's investigating authority shall take due account of any difficulties experienced by exporter of the other Party in supplying information requested and provide any assistance practicable; on request of an exporter of the other Party, a Party's investigating authority shall make available the timeframes, procedures and any documents necessary for the offering of an undertaking.

3. Without prejudice to the relevant provisions of WTO Anti-dumping Agreement regarding notification at the initiation stage to the exporting member whose export product is under investigation, the competent investigating authority of a Party shall notify the other Party of such initiation of the investigation procedure and send the

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model questionnaire of the investigation for the exporter or producer concerned and the list of the main known exporters or producers to the other Party.

Upon the receipt of the notification and information mentioned in the previous paragraph, the Party may notify relevant trade or industry associations or disclose the information to other parties concerned in a timely manner by the publicly available means, and may provide relevant information to the other Party as early as practicable.

4. For purposes of this Section, investigating authority is:
 - (a) for China, *Ministry of Commerce*, or its successor; and
 - (b) for Peru, the *National Institute of the Defense of the Competition and the Protection of Intellectual Property*, or its successor.

Section D Cooperation

1. The Parties may establish a cooperation mechanism between the investigation authorities of each Party to ensure each Party has a clear understanding of the practices adopted by the other Party in trade remedies investigations.
2. For purposes of this Section, competent investigation authority is:
 - (a) for China, the *Ministry of Commerce*, or its successor; and
 - (b) for Peru, the *Ministry of Foreign Trade and Tourism*, or its successor (for bilateral safeguard measures), and the *National Institute of the Defense of the Competition and the Protection of Intellectual Property*, or its successor (for antidumping and countervailing measures, and global safeguard measures).