

CHAPTER 8 TRADE REMEDIES

SECTION A: BILATERAL SAFEGUARD MEASURES

ARTICLE 8.1: DEFINITIONS

For the purposes of this Chapter:

competent investigating authority means:

- (a) for the State of Israel: the Commissioner of Trade Levies, in the Ministry of Economy or the corresponding unit in the Ministry of Agriculture and Rural Development;
- (b) for the Republic of Colombia: the Ministry of Trade, Industry and Tourism (Ministerio de Comercio, Industria y Turismo);

or their successors;

domestic industry means the producers as a whole of the like or directly competitive goods of a Party or whose collective output of the like or directly competitive goods constitutes a major proportion of the total production of such goods;

originating goods as referred to in Chapter 3 (Rules of Origin);

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

threat of serious injury means **serious injury** that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility;

transition period for each good means the period of tariff elimination for that good, with the addition of three years.

ARTICLE 8.2: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

1. Subject to Article 8.7.3, if a good originating in one Party, as a result of the reduction or elimination of a customs duty provided for in this Agreement, is being imported into the other Party in such increased quantities, in absolute or relative terms, and under such conditions that the imports of the good originating from that Party alone constitute a substantial cause of serious injury or threat of serious injury to a domestic industry, the importing Party may, to the minimum extent necessary to remedy the injury:

- (a) suspend the further reduction of any rate of a customs duty provided for under this Agreement on the goods; 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; or
 - (ii) the base rate as provided for in Article 2.14 (Elimination of Customs Duties) in Chapter 2 (Market Access for Goods).

2. The Party that applies a safeguard measure may establish an import quota for the product concerned under the agreed preference/concession established in this Agreement. If a quota is applied, such a measure shall not reduce the quantity of imports to a level below the average of imports before the existence of serious injury.

ARTICLE 8.3: LIMITATIONS FOR APPLYING A BILATERAL SAFEGUARD MEASURE

1. Bilateral safeguard measures may not be applied in the first year after the tariff preferences, under Chapter 2 (Market Access for Goods) of this Agreement, come into force.

2. A bilateral safeguard measure shall not be applied except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment and, it shall not be applied for a period exceeding two years.

However, this period may be extended to up to two additional years if the competent authorities of the importing Party determine, in conformity with the procedures specified in Article 8.4, that the 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, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years.

3. Neither Party shall apply a bilateral safeguard measure more than once against the same good.

4. For perishable or seasonal goods no measure may be taken more than four times within the initial two years or for a cumulative period exceeding four years provided in paragraph 2 above.

5. Upon termination of the bilateral safeguard measure, the rate of duty or quota shall be the level which would have been in effect had the measure not been imposed.

6. Bilateral safeguard measures may not be applied or maintained after the transition period unless otherwise agreed by the Parties.

7. Following conclusion of the transition period, the Joint Committee shall evaluate whether or not to continue the bilateral safeguard measures mechanism

included in this Chapter.

ARTICLE 8.4: INVESTIGATION PROCEDURES

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authority in accordance with its domestic legislation and 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*.

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 8.5 PROVISIONAL BILATERAL SAFEGUARD MEASURES

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of reduction or elimination of a customs duty under this Agreement, and that such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2. A Party shall not apply a provisional measure until at least 44 days after the date on which its competent authorities have initiated an investigation.

3. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Article 8.4.

ARTICLE 8.6: NOTIFICATIONS AND CONSULTATIONS

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

- (a) initiating a safeguard proceeding under this Chapter;
- (b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.2; and
- (c) taking a preliminary or final decision to apply or extend a safeguard measure.

2. A Party shall provide the other Party with a copy of the public version of its competent investigating authority's report under Article 8.4.1.

3. If a Party whose goods are subject to a safeguard proceeding under this Chapter

requests to hold consultations within 10 days from receipt of a notification as specified in paragraph 1(c), the Party conducting that proceeding shall enter into consultations with the requesting Party with a view to finding an appropriate and mutually satisfactory solution.

4. The consultations under paragraph 3 shall take place in the Joint Committee. In the absence of a decision or if no satisfactory solution is reached within 20 days of the notification being made, the Party may apply bilateral safeguard measures.

SECTION B: GLOBAL SAFEGUARD MEASURES

ARTICLE 8.7: IMPOSITION OF GLOBAL SAFEGUARD MEASURES

1. Each Party retains its rights and obligations in accordance with 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 in accordance with Article XIX of the GATT 1994 and the Safeguards Agreement, except that a Party taking a global safeguard measure shall exclude imports of an originating good of the other 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 bilateral safeguard measure; and
- (b) a measure in accordance with Article XIX of the GATT 1994 and the Safeguards Agreement.

4. In determining whether imports from the other Party are a substantial cause of serious injury or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of the other Party and the level and change in the level of imports of the other Party. In this regard, imports from the other Party normally shall not be deemed to be a substantial cause of serious injury or threat thereof, if the growth rate of imports from that Party during the period in which the injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

Imports from the Party which have been excluded from the applied safeguard measure, shall not be included in the calculation of the serious injury caused to the domestic industry of the Party who applied such measure.

5. The following conditions and limitations shall apply to a proceeding that may result in global safeguard measures under Article 8.4:

- (a) the Party initiating such a proceeding shall, without delay, deliver to the other Party written notice thereof;

- (b) upon termination of the measure, the rate of a customs duty or quota shall be the rate which would have been in effect had the measure not been imposed.

SECTION C: ANTIDUMPING AND COUNTERVAILING MEASURES

ARTICLE 8.8: ANTIDUMPING AND COUNTERVAILING MEASURES

Each Party retains its rights and obligations in accordance with Article VI of the GATT 1994, the Antidumping Agreement and the Subsidies Agreement, with regard to the application of antidumping duties and countervailing measures.