

Chapter Eight

Trade Remedies

Section A: Safeguards

Article 8.1: 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 duty pursuant to this Agreement, an originating good 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 good.
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 good; 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, and
 - (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.¹

Article 8.2: Standards for a Safeguard Measure

1. A Party may apply a safeguard measure, including any extension thereof, for no longer than four years. Regardless of its duration, such measure shall terminate at the end of the transition period.
2. Subject to paragraph 1, a Party may extend the period of a safeguard measure if the competent investigating authority determines, in conformity with the procedures set out in Article 8.3, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting.
3. 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.

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

Draft as of January 19, 2007
Subject to legal review for accuracy, clarity, and consistency.

4. A Party may not apply a safeguard measure more than once on the same good.
5. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 3.3 (Tariff Elimination), would have been in effect one year after the imposition of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:
 - (a) apply the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) as if the safeguard measure had never been applied; or
 - (b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) for the elimination of the tariff.

Article 8.3: Administration of Safeguard Proceedings

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws, regulations, decisions, and rulings governing safeguard proceedings under this Chapter.
2. Each Party shall entrust determinations of serious injury, or threat thereof, in safeguard proceedings under this Chapter to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.
3. A Party shall impose a safeguard measure only following an investigation by the Party's competent authorities in accordance with 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 a part of this Agreement, *mutatis mutandis*.
4. In the investigation described in paragraph 3, 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 a part of this Agreement, *mutatis mutandis*.
5. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures for safeguard proceedings under this Chapter.

Article 8.4: Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, on:
 - (a) initiating a safeguard proceeding under this Chapter;
 - (b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.1; and
 - (c) taking a decision to apply or extend a safeguard measure.

Draft as of January 19, 2007
Subject to legal review for accuracy, clarity, and consistency.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent investigating authority required under Article 8.3.3.
3. On request of a Party whose good is subject to a safeguard proceeding under this Chapter, the Party conducting that proceeding shall enter into consultations with the requesting 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 proceeding.

Article 8.5: Compensation

1. A Party applying a safeguard measure shall, after consultations 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. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the safeguard measure.
2. If the consultations under paragraph 1 do not result in an agreement on trade liberalizing compensation within 30 days, the Party against whose good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.
3. A Party shall notify the Party applying the safeguard measure 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 concessions under paragraph 2 shall terminate on the later of:
 - (a) the termination of the safeguard measure, or
 - (b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination).

Article 8.6: Global Actions

1. Each Party retains its rights and obligations under 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 pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement, except that a Party taking such an action may 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 safeguard measure; and
 - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

Draft as of January 19, 2007
Subject to legal review for accuracy, clarity, and consistency.

Article 8.7: Definitions

For purposes of this Section:

competent investigating authority means the “competent investigating authority” of a Party as defined in Annex 8.7;

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;

safeguard measure means a measure described in Article 8.1.2;

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

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

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 ten-year period beginning on the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 3.3 (Tariff Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, **transition period** means the tariff elimination period for the good set out in that Schedule.

Section B: Antidumping and Countervailing Duties

Article 8.8: Antidumping and Countervailing Duties

1. The United States shall continue to treat Panama as a “beneficiary country” for purposes of 19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H) and any successor provisions. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this paragraph.

2. Except for paragraph 1, no provision of this Agreement, including the provisions of Chapter Twenty (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures.

3. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.

Annex 8.7

Country-Specific Definitions

For purposes of this Chapter:

competent investigating authority means:

- (a) in the case of Panama, the *Comisión de Libre Competencia y Asuntos del Consumidor*;
- (b) in the case of the United States, the U.S. International Trade Commission;

or their successors.