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Subject to Legal Review for Accuracy, Clarity, and Consistency
January 28, 2004

Chapter Eight

Trade Remedies

Section A: Safeguards

Article 8.1: Imposition of a Safeguard Measure

1. A Party may impose 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 action is taken, 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
3.
 - (a) Except as provided in subparagraph (b), a Party shall apply a safeguard measure to imports of an originating good that are subject to a determination under paragraph 1 irrespective of their source.
 - (b) A Party may exclude imports of an originating good of another Party from application of a safeguard measure if the Party accorded duty-free treatment to imports of the good from such other Party, pursuant to an agreement between those Parties, for the three-year period preceding entry into force of this Agreement.

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

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4. No Party may apply a safeguard measure against an originating good of another Party as long as its share of imports of the originating good in the importing Party does not exceed three percent, provided that Parties with less than three percent import share collectively account for not more than nine percent of total imports of such originating good.

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 authorities determine, 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.

4. A Party may not impose 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

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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. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard proceedings under this Chapter, in accordance with the requirements set out in Annex 8.3.

Article 8.4: Notification and Consultation

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

- (a) initiating a proceeding under Article 8.3;
- (b) making a finding of serious injury or threat thereof caused by increased imports under Article 8.1; and
- (c) taking a decision to impose or extend a safeguard measure.

2. A Party shall provide to the other Parties a copy of the public version of the report of its competent investigating authority required under Article 8.3.

3. On request from a Party whose good is subject to a safeguard proceeding, the Party conducting that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1(a) or (b) 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 Parties against whose good the measure is taken, 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, any Party against whose good the measure is taken may suspend the application of substantially equivalent concessions with respect to its imports of originating goods 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.

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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 GATT 1994 and the WTO Agreement on Safeguards.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, except that a Party taking such an action may exclude imports of an originating good from another 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 GATT 1994 and the WTO Agreement on Safeguards.

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 safeguard 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

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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** shall mean the tariff elimination period for the good.

Section B: Antidumping and Countervailing Duties

Article 8.8: Antidumping and Countervailing Duties

1. The United States shall continue to treat each other Party as a “beneficiary country” for purposes of 19 USC 1677(7)(G)(ii)(III) and 1677(7)(H) and any successor provisions.² 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 in 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.

² Negotiators’ Note: The Parties understand that this obligation applies for so long as the United States provides the treatment described in 19 USC 1677(7)(G)(ii)(III) and 1677(7)(H) and any successor provisions to beneficiary countries under the Caribbean Basin Economic Recovery Act.

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Annex 8.3

Administration of Safeguard Proceedings

Institution of a Proceeding

1. A safeguard proceeding under this Chapter may be instituted by a petition or complaint by entities specified in domestic law. The entity filing the petition or complaint shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good.
2. A Party may direct its competent investigating authority to institute a proceeding or the authority may institute a proceeding on its own motion.

Contents of a Petition or Complaint

3. Where the basis for an investigation is a petition or complaint filed by an entity representative of a domestic industry, the petitioning entity shall, in its petition or complaint, provide the following information to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:
 - (a) product description: the name and description of the imported good concerned, the tariff subheading under which that good is classified, its current tariff treatment and the name and description of the like or directly competitive domestic good concerned;
 - (b) representativeness:
 - (i) the names and addresses of the entities filing the petition or complaint, and the locations of the establishments in which they produce the domestic good;
 - (ii) the percentage of domestic production of the like or directly competitive good that such entities account for and the basis for claiming that they are representative of an industry; and
 - (iii) the names and locations of all other domestic establishments in which the like or directly competitive good is produced;

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- (c) import data: import data for each of the five most recent full years that form the basis of the claim that the good concerned is being imported in increased quantities, either in absolute terms or relative to domestic production as appropriate;
 - (d) domestic production data: data on total domestic production of the like or directly competitive good for each of the five most recent full years;
 - (e) data showing injury: quantitative and objective data indicating the nature and extent of injury to the concerned industry, such as data showing changes in the level of sales, prices, production, productivity, capacity utilization, market share, profits and losses, and employment; and
 - (f) cause of injury: an enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that increased imports, either actual or relative to domestic production, of the imported good are causing or threatening to cause serious injury, supported by pertinent data.
4. Petitions or complaints, except to the extent that they contain confidential business information, shall promptly be made available for public inspection on being filed.

Notice Requirement

5. On instituting a safeguard proceeding under this Chapter, the competent investigating authority shall publish notice of the institution of the proceeding in the official journal of the Party. The notice shall identify the petitioner or other requester, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the determination to be made, dates of deadlines for filing briefs, statements and other documents, the place at which the petition and any other documents filed in the course of the proceeding may be inspected, and the name, address and telephone number of the office to be contacted for more information.

6. With respect to a safeguard proceeding instituted on the basis of a petition or complaint filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice required by paragraph 5 without first assessing carefully whether the petition or complaint meets the requirements of paragraph 3, including representativeness.

Public Hearing

7. In the course of each proceeding, the competent investigating authority shall:

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- (a) hold a public hearing, after providing reasonable notice, including notice of the time and place of the hearing, to allow all interested parties, and any association whose purpose is to represent the interests of consumers in the territory of the Party instituting the proceeding, to appear in person or by counsel, to present evidence and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and
- (b) provide an opportunity to all interested parties and any such association appearing at the hearing to cross-question interested parties making presentations at that hearing.

Confidential Information

8. The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties and consumer associations providing such information furnish non-confidential written summaries thereof, or where they indicate that the information cannot be summarized, the reasons why a summary cannot be provided.

Evidence of Injury and Causation

9. In conducting its proceeding the competent investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, including the rate and amount of the increase in imports of the good concerned, in absolute terms or relative to domestic production as appropriate, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. In making its determination, the competent investigating authority may also consider other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital.

10. The competent investigating authority shall not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and serious injury, or threat thereof. Where factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Deliberation and Report

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11. The competent investigating authority, before making an affirmative determination in a safeguard proceeding under this Chapter, shall allow sufficient time to gather and consider the relevant information, hold a public hearing, and provide an opportunity for all interested parties and consumer associations to prepare and submit their views.

12. The competent investigating authority shall publish promptly a report, including a summary thereof in the official journal of the Party, setting out its findings and reasoned conclusions on all pertinent issues of law and fact. The report shall describe the imported good and its tariff item number, the standard applied and the finding made. The statement of reasons shall set out the basis for the determination, including a description of:

- (a) the domestic industry seriously injured or threatened with serious injury;
- (b) information supporting a finding that imports are increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and
- (c) if provided for by domestic law, any finding or recommendation regarding the appropriate remedy and the basis therefor.

13. In its report, the competent investigating authority shall not disclose any confidential information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.

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Annex 8.7

Country-Specific Definitions

For purposes of this Chapter:

competent investigating authority means:

- a) in the case of Costa Rica, la Oficina de Prácticas de Comercio Desleal y de Medidas de Salvaguardia del Ministerio de Economía, Industria y Comercio en coordinación con la Dirección de Aplicación de Acuerdos Comerciales Internacionales del Ministerio de Comercio Exterior, or its successor;
- b) in the case of El Salvador, la Oficina de Administración de Tratados del Ministerio de Economía, or its successor;
- c) in the case of Guatemala; [to be inserted]
- d) in the case of Honduras, la Dirección General de Integración Económica y Política Comercial de la Secretaría de Industria y Comercio, or its successor;
- e) in the case of Nicaragua; la Dirección de Integración y Administración de Tratados del Ministerio de Fomento, Industria y Comercio, or its successor; and
- f) in the case of the United States, the U.S. International Trade Commission, or its successor.