

Chapter 6

Safeguard Measures

Article 6.01 Bilateral Safeguard Measures

1. The application of bilateral safeguard measures shall be governed by provisions in this Chapter and supplemented by the provisions contained in Article XIX of GATT 1994, the Agreement on Safeguards and each Party's respective legislation.
2. During the transition period, each Party may apply a safeguard measure if, as a result of the reduction or elimination of a custom duty pursuant to this Agreement, a good originating in the territory of a Party is being imported into the territory of the other Party, 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 the like or directly competitive good.
3. If the conditions in paragraph 2 are met, the Party may to the extent necessary remedy or prevent serious injury or threat thereof, and facilitate adjustment:
 - (a) suspend the future reduction of any customs duty on the product provided for under this Agreement; or
 - (b) increase the customs duty on the product to a level not to exceed the lesser of:
 - (i) the Most-favored-Nation (MFN) applied customs duty in effect at the time the action is taken; and
 - (ii) the MFN applied customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 6.02 Standards for a Safeguard Measures

1. Except with the consent of the Party against whose originating good the action is taken, a Party may apply a safeguard measure, including any extension thereof, for no longer than three years.
2. Subject to paragraph 1 a Party may extend the period of a safeguard measure beyond a period of two years if the investigating authority determines, in conformity with the procedures set out in Article 6.04, 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 duration of a safeguard measure is over two years, the Party applying the measure shall progressively liberalize it at regular intervals during the extension period of application.

4. The Parties may only apply and extend the application of safeguard measures on the same good on two occasions during the transition period.

5. A safeguard measure may be applied on a second occasion, provided that at least a period equivalent to the half of that one during which the safeguard measure was applied for the first time has passed.

6. Except with the consent of the Party against whose originating good the action is taken, no Party may maintain a safeguard measure beyond the expiration of the transition period.

7. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:

- (a) apply the customs duty set out in the Party Schedule to Annex 3.03 (Customs Tariff Elimination Schedule) as if the safeguard measure had never been applied; or
- (b) eliminate the customs duty in equal annual stages ending on the date set out in the Party's Schedule to Annex 3.03 (Customs Tariff Elimination Schedule) from the customs duty applied before the action is taken.

Article 6.03 Provisional Measures

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that imports originated from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and on condition that this increase has been the cause of serious injury, or threat thereof. The duration of such a provisional measure shall not exceed 120 days.

2. The period during which a provisional safeguard measure has been applied shall be counted for purposes of determining the duration of the period during which the final safeguard measure shall be applied pursuant to Article 6.02.

3. Provisional measures that do not become final shall be excluded from the limitation provided in Article 6.02.

Article 6.04 Administration of Safeguard Proceeding

1. Each Party shall ensure consistent and impartial application of its laws, regulations, decisions and rulings governing all safeguard procedures.

2. Each Party shall entrust the procedures for applying safeguard measures, the determination of serious injury, or threat thereof, to the competent investigating authority as defined in Annex 6.04, subject to review by judicial or administrative

authorities, to the extent provided by domestic legislation. Negative determinations on the existence of serious injury, or threat thereof, may not be modified by the investigating authority unless such change is required by the respective judicial or administrative bodies. The investigating authority empowered under domestic legislation to conduct such procedures shall be provided with all means necessary to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for applying safeguard measures, in accordance with the requirements set forth in this Chapter and the provisions of the Agreement on Safeguards.

Article 6.05 Notification and Consultations

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

- (a) initiating a safeguard investigation under this Chapter;
- (b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 6.01; and
- (c) taking a decision to apply or extend a safeguard measure.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent investigating authority.

3. On request of a Party whose good is subject to a safeguard investigation under this Chapter, the Party conducting that investigation shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the investigating authority has issued in connection with the investigation.

4. Any safeguard measure shall enter into force no later than one year from the date on which the investigation is initiated.

Article 6.06 Compensation

1. The Party applying a safeguard measure described in this Article shall after consultations with the Party against whose product the measure is applied, provide a mutually agreed 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, or a period otherwise mutually agreed, after the application of the safeguard measure.

2. If the consultations of paragraph 1 do not result in an agreement on the compensation within 30 days, or a period otherwise mutually agreed, the Party against whose originating 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 customs duty returns to the rate of duty set out in the Party Schedule to Annex 3.03 (Customs Tariff Elimination Schedule).

Article 6.07 Global Safeguard Measures

1 Each Party retains its rights and obligations under Article XIX of GATT 1994 and the 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 the GATT 1994 and the Agreement on Safeguards, except that a Party taking such an action may exclude imports of an originating good of the other Party covered by this Agreement if that Party accounts for not more than seven percent of total imports of the good concerned.

3 No Party may apply, with respect to the same good, at the same time:

- (a) a bilateral safeguard measure; and
- (b) a measure under Article XIX of the GATT 1994 and the Agreement on Safeguards.

Article 6.08 Dispute Settlement on Safeguard Measures

Neither Party may request the establishment of an arbitral group pursuant to Article 22.07 (Request for Establishment of an Arbitration Group), before the other Party has imposed a safeguard measure.

Article 6.09 Definitions

For purposes of this Chapter:

Agreement on Safeguards means the WTO Agreement on Safeguards;

causality relation means “causality relation” as defined in the Agreement on Safeguards;

critical circumstances means circumstances where the delay of the application of safeguard measures could cause damage which would be difficult to repair;

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 like or directly competitive products constitutes a major proportion of the total domestic production of such goods; and

investigating authority means the competent “investigating authority” as defined in Annex 6.04;

safeguard measure means a measure described in Article 6.01.¹

serious injury means “serious injury” as defined in the Agreement on Safeguards (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 “threat of serious injury” as defined in the Agreement on Safeguards (serious injury that on the basis of facts and not merely on allegation, conjecture, or remote possibilities, is clearly imminent); and

transition period means the tariff elimination period for the good set out in the Party’s Schedule.

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

Annex 6.04

Investigating Authority

For purposes of this Chapter, the investigating authority shall be:

- (a) in the case of the Republic of Nicaragua, the Direccion de Aplicacion de Tratados of the Ministerio de Fomento, Industria y Comercio; and
- (b) in the case of Republic of China (Taiwan), the International Trade Commission of the Ministry of Economic Affairs;

or their successors.