

CHAPTER 4

BILATERAL SAFEGUARD MEASURES

ARTICLE 4.1

Definitions

For the purposes of this Chapter, the terms “serious injury”, “threat of serious injury”, “domestic industry” and “like or directly competitive product” mean the same as under the ASFG.

ARTICLE 4.2

Conditions for the Application of Bilateral Safeguard Measures

1. A State Party may, in exceptional circumstances, apply bilateral safeguard measures to imports from another State Party under the conditions established in this Chapter, if imports of a product under preferential terms have increased in such quantities, absolute or relative to domestic production or consumption of the importing State Party, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing State Party. Bilateral safeguard measures shall be applied only to the extent necessary to prevent or remedy serious injury or threat thereof.
2. Bilateral safeguard measures shall only be applied following an investigation by the competent investigating authorities¹ of the importing State Party under the procedures established in the Annex VIII (Investigation and Transparency Procedures). The purpose of the investigation shall be the assessment of the conditions provided for in paragraph 1.
3. Bilateral safeguard measures shall only be applied between an EFTA State on the one side and a MERCOSUR State on the other.

¹ For the purposes of this Chapter and of Annex VIII (Investigation and Transparency Procedures), competent investigating authority means, in the case of the MERCOSUR States, Ministerio de Economía or its successor in Argentina, Ministério do Desenvolvimento, Indústria, Comércio e Serviços or its successor in Brazil, Ministerio de Industria y Comercio or its successor in Paraguay, and Política Comercial del Ministerio de Economía y Finanzas or its successor in Uruguay. In the case of the EFTA States, the competent investigating authorities shall be communicated to the State Party concerned upon notification of an investigation.

ARTICLE 4.3

Application of Bilateral Safeguard Measures

Bilateral safeguard measures adopted under this Chapter shall consist of:

- (a) a temporary suspension of the further reduction of any customs duty provided for under this Agreement for the product concerned; or
- (b) an increase of the rate of customs duty or a reduction of the tariff preference of the product concerned so that the rate of customs duties does not exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty on the product in effect at the time the measure is taken;
 - (ii) the base rate of customs duty referred to in the respective Party's Schedule of Tariff Commitments on Goods; or
 - (iii) the most-favoured-nation applied rate of customs duty on the product on the date of the entry into force of this Agreement.

ARTICLE 4.4

Preservation of Market Access

1. When applying subparagraph (b) of Article 4.3 (Application of Bilateral Safeguard Measures), a State Party should ensure that historical trade flows that do not cause or threaten to cause serious injury to the domestic industry of the importing State Party are preserved. The State Party that applies a bilateral safeguard measure shall, if possible, establish an import quota for the product concerned within which such product continues to benefit from the agreed preference established under this Agreement. The import quota shall not be less than the average imports of the product concerned during the 36 month-period prior to the last 12 months of the period defined in paragraph 3 of Article 3 of Annex VIII (Investigation and Transparency Procedures), unless a clear justification is given that a lower level is necessary to prevent or remedy serious injury.

2. If no quota is established, the bilateral safeguard measure shall only consist of a reduction of the tariff preference applicable to such product, which shall not be higher than 50 % of the tariff preference established under this Agreement.

3. A State Party that may be affected by a bilateral safeguard measure may request any adequate means of compensation in the form of substantially equivalent trade liberalisation.

ARTICLE 4.5

Duration

1. Bilateral safeguard measures shall be applied only for a period necessary to prevent or remedy the serious injury and to facilitate adjustment of the domestic industry. That period shall not exceed two years. In exceptional circumstances, after review by the importing State Party's investigating authority and notification to the Joint Committee, the measures may be applied up to a total maximum period of three years, including the period of application of any provisional measure.
2. Upon termination of the bilateral safeguard measure, the margin of preference shall be the one that would be applied to the product in the absence of the measure, according to the Schedule of Tariff Commitments on Goods.
3. No bilateral safeguard measure shall be applied to a product which has already been subject to a bilateral safeguard measure unless a period of half the total duration of the previous measure has elapsed.
4. The State Parties shall not apply, extend or keep in force a bilateral safeguard measure beyond the expiration of a transition period of 12 years from the date of entry into force of this Agreement. Regarding any goods for which the Schedule of Tariff Commitments on Goods of the State Party applying the measure provides for tariff elimination in ten or more years, the transition period shall be 18 years from the date of the entry into force of this Agreement.

ARTICLE 4.6

Provisional Bilateral Safeguard Measures

In critical circumstances, where delay may cause damage which would be difficult to repair, a State Party may, after due notification, apply a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased preferential imports have caused or are threatening to cause serious injury to the domestic industry. The duration of the provisional bilateral safeguard measure shall not exceed 200 days, during which period the requirements of this Chapter shall be met. If the final determination concludes that there was no serious injury or threat thereof to the domestic industry caused by imports under preferential terms, the increased tariff or provisional guarantee, if collected or imposed under provisional bilateral safeguard measures, shall be promptly refunded

ARTICLE 4.7

Notification and Consultations between the State Parties

1. If a State Party has determined that the conditions to impose a definitive bilateral safeguard measure are met, it shall notify and at the same time invite the exporting State Party for consultations. The notification and the invitation shall be made at least 30 days before a definitive bilateral safeguard measure is expected to come into force. No

definitive bilateral safeguard measure shall be applied in the absence of such notification and such invitation.

2. The notification shall include:

- (a) evidence of serious injury or threat of serious injury to the domestic industry caused by the increased preferential imports;
- (b) a precise description of the imported product subject to the measure, and its classification under the HS;
- (c) a description of the measure proposed;
- (d) the date of entry into force of the measure and its duration; and
- (e) the period for consultations.

3. The objective of the consultations referred to in paragraph 1 shall be a mutual understanding of the facts and an exchange of views, aimed at reaching a mutually satisfactory solution. If no satisfactory solution is reached within 30 days from the notification, the State Party may apply the bilateral safeguard measure at the end of the 30 day period.

4. For provisional bilateral safeguard measures, consultations shall take place within 30 days from the receipt of the notification, but they shall not be a prerequisite for the imposition of provisional bilateral safeguard measures.

5. At any stage of the investigation, the notified State Party may request consultations with the notifying State Party, or any additional information that it considers necessary.