

CHAPTER III PREFERENTIAL SAFEGUARDS

SECTION I DEFINITIONS

Article 1

For the purposes of this Chapter:

1. "Competent investigating authority" means:
 - a) in the case of Egypt, the Trade Agreements Sector of the Ministry of Trade and Industry or its successor in Egypt;
 - b) in the case of MERCOSUR, Ministerio de Industria y Turismo or its successor in Argentina; Secretaria de Comércio Exterior do Ministério do Desenvolvimento, Indústria e Comércio Exterior or its successor in Brazil; Ministerio de Industria y Comercio or its successor in Paraguay; and Asesoría de Política Comercial del Ministerio de Economía y Finanzas or its successor in Uruguay.
2. "Serious injury" shall be understood to mean the significant overall impairment in the position of a domestic industry.
3. "Threat of serious injury" shall be understood to mean the serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility.
4. "Domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive goods, operating in the territory of the Party or Signatory Parties concerned, or when it is not possible, those whose collective output of the like or directly competitive goods constitutes a major proportion of the total production of such goods.

SECTION II CONDITIONS FOR APPLICATION OF PREFERENTIAL SAFEGUARD MEASURES

Article 2

1. Preferential safeguard measures may be applied under the conditions established in this Chapter, when the imports of a good under preferential terms have increased in such quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing Party or Signatory Parties concerned.
2. Preferential safeguard measure shall be applied only to the extent necessary to prevent or remedy serious injury.

Article 3

Preferential safeguard measures shall not be applied after four (4) years from the date of the finalization of the tariff elimination or reduction program applicable to the goods unless otherwise agreed by the Parties. After this period, the Joint Committee shall evaluate whether or not to continue the preferential safeguard measures mechanism referred to in this Chapter.

Article 4

1. MERCOSUR may adopt preferential safeguard measures:

- a) as a sole entity, as far as all requirements to determine the existence of serious injury or threat thereof, being caused by the imports of goods as a result of the reduction or elimination of a customs duty provided for in this Agreement, have been fulfilled on the basis of conditions applied to MERCOSUR as a whole; or
- b) on behalf of one or more of its Member States, in which case the requirements for the determination of the existence of serious injury or threat thereof, being caused by the imports as a result of the reduction or elimination of a customs duty provided for in this Agreement, shall be based on the conditions prevailing in the affected Member State(s) and the measure shall be limited to that Member State(s).

2. Egypt may apply preferential safeguard measures to the imports from MERCOSUR or MERCOSUR Member States where such serious injury or threat thereof is being caused by the imports of a good as a result of the reduction or elimination of a customs duty provided for in this Agreement.

3. The Parties may apply preferential safeguard measures only to the imports from a Party or Signatory Party where such serious injury or threat thereof is being caused by the imports of a good under preferential terms from such Party or Signatory Party.

Article 5

Preferential safeguard measures adopted under this Chapter shall consist of temporary suspension or reduction of the tariff preferences established in this Agreement for the good subject to the measure. Any increase in the rate of customs duty on the good subject to preferential safeguard measures shall not exceed the applied MFN customs duty or base duty, whichever being the lowest.

Article 6

1. The Party that applies a preferential safeguard measure should establish an import quota within which the good concerned would benefit from the agreed preference established in this Agreement. This import quota shall not be lower than the average imports of the good concerned during the representative period over which serious injury was determined. A higher level of quota may be applied if it is duly justified.

2. In case a quota is not established, the preferential safeguard measure shall only consist of a reduction of the preference, which shall not be greater than 50% of the tariff preference established in this Agreement.

Article 7

1. The total period of application of a preferential safeguard measure shall not exceed two (2) years.

2. In exceptional circumstances the Joint Committee will authorize the application of a preferential safeguard measure for a good that has already been subject to a preferential safeguard measure for an additional period of two (2) years or less.

3. Upon termination of the preferential safeguard measure, the preference shall be the one that would be applied to the good in the absence of the measure, according to the tariff elimination schedule.

Article 8

The investigation to determine serious injury or threat thereof as a result of increased imports of a good under preferential terms shall take into consideration all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry affected, and in particular, the following:

- a) the amount and rate of the increase in preferential imports of the good concerned in absolute and relative terms;
- b) the share of the internal market taken by increased preferential imports;
- c) the consequent impact on the domestic industry of the like or directly competitive goods, based on factors, including: changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment; and,
- d) the existence of a causal link between the increased imports of the good under preferential terms and the serious injury or threat thereof to the domestic industry.

SECTION III INVESTIGATION AND TRANSPARENCY PROCEDURES

Article 9

1. Each Party or Signatory Party shall establish or maintain published procedures for the application of preferential safeguard measures, in compliance with the provisions established in this Chapter. Investigations shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties. The competent investigating authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.
2. Investigating authorities shall take due account of any difficulties experienced by interested parties in submitting information in compliance with Article 28 of Chapter I.

Article 10

1. Any information which is by nature confidential or which is provided on a confidential basis shall, upon good cause being shown, be treated as such by the competent investigating authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information may not be summarised, the reasons why a summary cannot be provided.
2. If the competent investigating authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 11

The period between the date of publication of the decision to initiate the investigation and the publication of the final decision shall not exceed eight (8) months. No preferential safeguard measure will be applied in case the timeline is not observed by the competent investigating authorities.

SECTION IV NOTIFICATIONS AND CONSULTATIONS

Article 12

1. The importing Party or Signatory Party shall notify the exporting Party or Signatory Party of:

- a) the decision to initiate the investigation under this Chapter;
- b) the decision to apply or not a preferential safeguard measure.

Article 13

A Party proposing to apply a preferential safeguard measure shall provide adequate opportunity for prior consultations to the exporting Party or Signatory Party concerned. With this objective, the Party shall notify the other Party or Signatory Party when finding evidence of serious injury or threat thereof caused by increased preferential imports that would lead to a decision to apply a preferential safeguard measure. The notification shall be provided no less than thirty (30) days before the measure comes into force. The notifications shall include:

- a) information concerning the existence of serious injury or threat of serious injury to the domestic industry caused by the increase in preferential imports;
- b) complete description of the imported good subject to the measure;
- c) description of the measure proposed; and,
- d) the date of entry into force of the measure and its duration.

Article 14

A Party may not apply a preferential safeguard measure under this Chapter without having afforded an opportunity for consultations, the objective of which shall be the exchange of opinions, aimed at reaching a mutually satisfactory solution. If no satisfactory solution is reached within 30 days of the notification under Article 13 of this Chapter, the Party may apply the preferential safeguard measure.

SECTION V LEVEL OF CONCESSIONS

Article 15

1. A Party or Signatory Party proposing to apply a preferential safeguard measure shall endeavour to maintain a substantially equivalent level of concessions to that existing under this Agreement between it and the Party or Signatory Party which would be affected by such a measure. To achieve this objective, the Parties or Signatory Parties concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on trade.

2. If no agreement is reached within 30 days in the consultations set forth under Article 14 of this Chapter, the Parties or Signatory Parties concerned shall be free to, no later than ninety (90) days after the measure has been applied, suspend the application of substantially equivalent concessions or other obligations under the Agreement, to the trade of the Party or Signatory Party applying the measure.

CHAPTER IV DISPUTE SETTLEMENT

SECTION I APPLICATION OF THE CHAPTER

Article 1

The provisions of this Chapter shall apply with respect to any disputes concerning the interpretation, application of and/or non-compliance with the provisions of the Free Trade Agreement between MERCOSUR and the Arab Republic of Egypt and the decisions of the Joint Committee taken pursuant to this Agreement.

Article 2

1. Any dispute regarding matters arising under the provisions of this Agreement and the decisions of the Joint Committee taken pursuant to this Agreement, on issues regulated by the WTO Agreement, may be settled in accordance with this Chapter or with the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (hereinafter referred to as "the DSU") at the complaining party's election.

2. Where a dispute settlement proceeding has been initiated with regard to a particular measure, either under this Chapter or under the DSU, a dispute settlement proceeding regarding the same measure shall not be initiated in the other forum.

3. For the purposes of this Article, a dispute settlement proceeding shall be considered to have been initiated under this Chapter when the complaining party requests consultations under Article 4 of this Chapter.