

ANNEX IV

SAFEGUARD MEASURES

Part I Global Safeguards

Article 1

The Signatory Parties shall retain their rights and obligations to apply safeguard measures consistent with Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

Part II Preferential Safeguards

Article 2 Definitions

For the purposes of Part II of this Annex:

1. "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products, operating in the territory of the Party or the Signatory Party, as the case may be, or when it is not possible, those whose collective output of the like or directly competitive products constitutes a major proportion of the total production of such products;
2. "preferential imports" shall be understood to mean products for which tariff preferences had been negotiated under this Agreement;
3. "serious injury" shall be understood to mean the significant overall impairment in the position of a domestic industry;
4. "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.

Article 3 Conditions for Application of Preferential Safeguard Measures

1. Without prejudice to the rights and obligations referred to in Article 1, the Parties or the Signatory Parties may apply preferential safeguard measures under the conditions established in this Annex, when preferential imports have increased in such quantities, absolute or relative to domestic production of the importing party under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing Party or importing Signatory Party, as the case may be.

2. Preferential safeguard measures shall only be applied following an investigation by the competent authorities of the importing party under the procedures established in this Annex.

3. The preferential safeguard measure shall be applied only to the extent necessary to prevent or remedy serious injury.

Article 4

Preferential safeguard measures shall not be applied in the first year after the tariff preferences negotiated under the Agreement come into force.

Article 5

1. SACU may apply preferential safeguard measures on a customs union-wide basis, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in the SACU as a whole, or a SACU Signatory Party may apply preferential safeguard measures individually, if provided for in terms of the SACU Agreement, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in that Signatory Party and the measure shall be limited to that Signatory Party.

2. MERCOSUR may apply preferential safeguard measures on a customs union-wide basis, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in MERCOSUR as a whole, or a MERCOSUR Signatory Party may apply preferential safeguard measures individually, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in that Signatory Party and the measure shall be limited to that Signatory Party.

3. A Party or Signatory Party may apply preferential safeguard measures only to the imports from one or more Signatory Parties when serious injury or threat thereof is being caused by such imports.

Article 6

The preferential safeguard measures adopted under this Annex shall consist of either a quota, or a suspension or a reduction of the tariff preferences established in this Agreement for the product subjected to the measure.

a) When a party applies a preferential safeguard measure as a quota, such a measure shall not reduce the annual quantity of preferential imports below the level of the average annualized imports of the product concerned in the thirty-six (36) month period previous to the period for which serious injury was determined. In this case, out of quota imports would receive either reduced preferences or the applied Most Favoured Nation rate. A different level of quota may be applied if it is duly justified.

b) When a party applies a preferential safeguard measure as a suspension or a reduction of the tariff preferences, such measure shall maintain the preferential

conditions for a part of the imports of the product concerned in the form of a quota. In this case, the annual fixed quota cannot be less than the average annualized imports of the product concerned in the thirty-six (36) month period previous to the period for which serious injury was determined. A different level of quota may be applied if it is duly justified.

Article 7

The total period of application of a preferential safeguard measure, including the period of application of any provisional measure, shall not exceed two (2) years.

Article 8

No preferential safeguard shall be applied again to preferential imports which have been subject to such a measure, unless the period of non-application is at least of one (1) year from the end of the application period of the previous measure.

Article 9

1. The investigation to determine serious injury or threat thereof as a result of increased preferential imports of a certain product shall take into consideration all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry affected, particularly the amount and rate of the increase in preferential imports of the product concerned, in absolute and relative terms; the relationship between the preferential and non-preferential imports, as well as between the increase of one and the other; the share of the domestic market taken by these imports; changes in the level of sales; prices; production; productivity; capacity utilization; profits and losses; employment; and other factors that, although not related to the evolution of preferential imports, have a causal relationship with the injury or the threat of injury to the domestic industry in question.

2. When factors other than increased preferential imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased preferential imports.

Article 10

Investigation and Transparency Procedures

A Party or Signatory Party may initiate a safeguard investigation at the request of the domestic producers in the importing Party or Signatory Party of the like or directly competitive product.

Article 11

The purpose of investigation shall be:

- a) to assess the quantities and conditions under which the product is being imported;
- b) to determine the existence of serious injury or threat of serious injury to the domestic industry; and

- c) to determine the causal link between the increased preferential imports of the product concerned and the serious injury or threat thereof to the domestic industry, pursuant to the terms of Article 9 of this Annex.

Article 12

The period between the date of publication of the decision to initiate the investigation and the publication of the final decision shall not exceed one (1) year.

Article 13

Each Party or Signatory Party shall establish or maintain transparent, effective and equitable procedures for the impartial and reasonable application of safeguard measures, in compliance with the provisions established in this Annex.

Article 14

Provisional Safeguards

In critical circumstances where delay may cause damage which would be difficult to repair, a Party or Signatory Party, after due notification, may take a provisional 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. The duration of the provisional measure shall not exceed two hundred (200) days, during which period the requirements of this Annex shall be met. If final determination concludes that there was no serious injury or threat thereof to domestic industry caused by imports under preferential terms, the increased tariff, if collected under provisional measures, shall be promptly refunded.

Article 15

Public Notice

1. The importing Party or Signatory Party shall notify the exporting Signatory Party of:
 - a) the decision to initiate the investigation under this Annex;
 - b) the decision to apply a provisional safeguard measure;
 - c) the decision to apply or not a definitive safeguard measure.
2. The decision shall be notified by the Party or Signatory Party within a period of seven (7) days from the publication and shall be accompanied by the appropriate public notice.

Article 16

The public notice of the initiation of a safeguard investigation shall include the following information:

- a) the name of the petitioner;

- b) the description of the product subject to the measure, including its tariff classification under the Harmonised System;
- c) the deadline for the request for hearings and the venue where hearings shall be held;
- d) the deadline for the submission of information, statements and other documents;
- e) the address where the request or other documents related to the investigation can be examined;
- f) the name, address and telephone number of the institution which can provide further information; and
- g) a summary of the facts upon which the initiation of the investigation was based, including data on imports that have supposedly increased in absolute or relative terms to total production or internal consumption and analysis of the domestic industry situation based on all the elements conveyed in the request.

Article 17

1. The public notice or report of the decision to apply a provisional or definitive safeguard measure shall include the following information:

- a) description of the product subject to the measure, including its tariff classification under the Harmonised System;
- b) information and evidence leading to the decision, such as:
 - i) the increasing or increased preferential imports;
 - ii) the situation of the domestic industry;
 - iii) the fact that the increasing preferential imports are causing or threatening to cause serious injury to the domestic industry; and
 - iv) in the case of preliminary determination, the existence of critical circumstances;
- c) other reasoned findings and conclusions on all relevant issues of fact and law;
- d) description of the measure to be adopted;
- e) the date of entry into force of the measure and its duration.

2. The public notice shall include at least (a), (d) and (e), which shall be conveyed along with the report to all Signatory Parties.

Article 18

1. A Party or Signatory Party proposing to apply a definitive safeguard measure shall provide adequate opportunity for prior consultations to the exporting Signatory Party. With this objective, the Party or Signatory Party shall notify the exporting Signatory Party its decision to apply a definitive safeguard measure. The notification shall be provided no less than thirty (30) days before the measure comes into force.

2. The notifications shall include:

- i) evidence of the existence of serious injury or threat of serious injury to the domestic industry caused by the increased imports;
- ii) description of the product subject to the measure, including its tariff classification under the Harmonised System;
- iii) description of the measure proposed;
- iv) the date of entry into force of the measure and its duration;
- v) the period for consultations; and
- vi) the criteria employed or any objective information proving that the conditions established in this Annex for the application of a measure have been met.

Article 19

At any stage of the investigation, the notified Signatory Party may request consultations to the importing Party or Signatory Party any additional information that it considers necessary.

Article 20

Not later than five (5) years after the entry into force of this Agreement, the Joint Administration Committee shall review the operation of this Annex and, as appropriate, propose to the Parties amendments to its text. In the course of this review, the Joint Administration Committee shall consider, in particular, the experience with the application of the preferential safeguard mechanism.