

ANNEX - D

PREFERENTIAL SAFEGUARD MEASURES

Definitions

Article 1

For the purposes of this Annex:

1. **domestic industry** means the producers as a whole of the like or directly competitive products, operating in the territory of the Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of such products.
2. **serious injury** means the significant overall impairment in the position of a domestic industry;
3. **threat of serious injury** means the serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility;

Conditions for Application of Preferential Safeguard Measures

Article 2

1) The Parties can apply safeguard measures under the conditions established in this Annex, when the imports of a product under preferential terms under this Agreement have increased in such quantities, absolute or relative to, domestic production of the importing Party under such conditions that the imports of the good from the exporting Party alone⁴ constitute a substantial cause of serious injury, or threat thereof, to the importing Party's domestic industry.

2) Preferential safeguard measures shall be applied following an investigation by the competent authorities of the importing Party under the procedures established in this Annex. These measures may not be applied simultaneously for the same product with the application of Global Safeguards.

Article 3

Preferential Safeguard measures may not be applied to any product in the first year after the tariff preferences negotiated under this Agreement come into force.

⁴ For purpose of certainty, the Parties understand that a Party is not prevented from initiating a preferential safeguard measure investigation in the event of a surge of imports from the territory of the other Party and of non-Parties. For further certainty the Parties understand that preferential safeguard measures can only be imposed on the other Party when the increase in the imports of such goods from that other Party alone constitute a substantial cause of serious injury or threat of serious injury, to domestic industry producing a like or directly competitive product.

Article 4

1. The preferential safeguard measures adopted under this Annex shall consist of temporary suspension or reduction of the tariff preferences established in this Agreement for the product subjected to the measure.
2. Preferential safeguard measure, during the first year of its imposition, shall not apply to a quantity equal to that imported during the twelve (12) months prior to the period for which serious injury was determined plus 10%. The period of determination of serious injury would be twelve (12) months starting from the date of initiation of investigation.
3. For the second year of imposition of preferential safeguard measures, the quantity that shall be exempt from the measure will be the quantity as at paragraph (2) above plus 10%.
4. In case quantities indicated at paragraphs (2) and (3) above cannot be established on account of any reason, the Parties shall enter into mutual consultation to arrive at a satisfactory solution.

Article 5

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

Article 6

No preferential safeguard measure shall be applied again to the import of a product under preferential terms which has been subject to such a measure, unless the period of non-application for the same product is at least one year or the duration of the earlier preferential safeguard measure, whichever is higher.

Article 7

The preferential safeguard measures applied in accordance with this Annex shall not affect the imports, which have been cleared by the customs of importing Party prior to the date of entry into force of the measure.

Article 8

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 following:

- (a) the amount and rate of the increase in preferential imports of the product concerned in absolute and relative terms,
- (b) the share of the domestic market taken by increased preferential imports;
- (c) the price of the preferential imports;

- (d) the consequent impact on the domestic industry of the like or directly competitive products, based on factors, including: production, productivity, capacity utilisation, stock, sales, market share, prices, profits, losses and employment;
- (e) the relationship between the preferential and non-preferential imports; as well as between the increase of one and the other;
- (f) 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.

Investigation and Transparency Procedures

Article 9

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

Article 10

The purpose of an 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 imports of the product concerned and the serious injury or threat thereof to the domestic industry, in compliance with the provisions of this Annex.

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 one (1) year.

Article 12

Each 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.

Notification and Public Notice

Article 13

1. The importing Party shall immediately notify the exporting Party upon:

- (a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply a safeguard measure.

2. The importing Party shall notify the other Party within a period of seven days of the publication of public notice of the decision to apply a preferential safeguard measure which shall be accompanied by the appropriate public notice in accordance with Article 16.

Article 14

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

(a) the name of the petitioner;

(b) the complete description of the imported product under investigation, which is sufficient for customs purposes and its classification in accordance with the Harmonized 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 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.

Article 15

1. A Party proposing to apply a preferential safeguard measure shall provide adequate opportunity for prior consultations to the exporting Party as far in advance of taking any such measure as practicable and in no case less than 30 days. With this objective, the Party shall notify the other Party as provided in Article 13 (2)

The notification 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) the complete description of the product subjected to the measure, which is sufficient for customs purposes, 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 16

The public notice of the decision to apply a preferential safeguard measure shall include the following information:

- (a) the complete description of the product subjected to the safeguard measure sufficient for customs purposes, including its tariff classification under the Harmonized 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; and
 - iii) the fact that the increasing preferential imports that are causing or threatening to cause serious injury to the domestic industry;
- (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.

Article 17

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

Competent Authorities

Article 18

The competent investigating authorities referred to in the Article X of this Annex will be:

- (a) in the case of India, to be notified by the time of entry into force of this Agreement;
- (b) in the case of Chile, the National Commission in Charge of the Investigation of the Existence of Price Distortions in Imported Goods ("Comisión Nacional Encargada de Investigar la Existencia de Distorsiones en el Precio de las Mercaderías Importadas"), or its successor.

Article 19

After five (5) years from the entry into force of this Agreement, the Parties shall review the operation of this Annex with a view to determining whether there is a need to discontinue the preferential safeguard measures.