

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter XIV Safeguard Measures

CHAPTER XIV Safeguard Measures

Section A General Aspects

Article 1. Definitions

1.1. The following definitions shall apply:

Agreement on Safeguards means the Agreement on Safeguards, which forms part of the Agreement Establishing the World Trade Organization (WTO);

Competent authority means the authority of a Party listed in Annex XX, or those who succeed them;

[**Critical circumstances** means those circumstances in which a delay in the application of the safeguard measure could cause injury difficult to repair;]

[**Directly competitive good** means that which, while not [necessarily] similar to the one that it is compared with, is essentially equivalent for purposes of trade being put to the same use and being interchangeable with the latter. [To establish whether a good is directly competitive, the competent authority shall also consider whether the good makes use of the same distribution channels, is sold in the same market, and is purchased by a similar group of consumers;]]

Domestic industry means the producers as a whole of the similar or directly competitive goods operating within the territory of a Party, [or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods];

GATT 1994 means the General Agreement on Tariffs and Trade of 1994, which forms part of the Agreement Establishing the World Trade Organization;

[**Interested [parties] [party]** means the petitioner; other [domestic] producers; commercial, trade or business associations in which the majority of the members are producers of the good under investigation; foreign producers; exporters; importers; governments of the exporting or producing Parties [; and consumers or associations representing them];]

[**Like good** means [includes an identical good and] one that, although not the same in all aspects, has similar features and composition, which enables it to perform the same functions and to be commercially interchangeable with the good it is compared with;]

[**Safeguard measure** means [all measures applied in accordance with the provisions of this Chapter. This does not include any safeguard measure derived from a procedure initiated before this Agreement entered into force.] [a hemispheric safeguard measure described in Article 4.2.;]]

Serious injury means a significant overall impairment of the situation of a domestic industry;

[**Substantial cause** means a cause which is important and not less than any other cause;]

[**Substantial supplier** means any Party that for the three years preceding an investigation described in Article 6 (Investigation Procedures and Transparency Requirements) was, on average, the territory of

origin of at least ten percent (10%), by value, of imports from the Party of the good subject to a safeguard measure;]

Threat of serious injury means [the clear imminence of serious injury, determined on the basis of facts and not merely on allegations, conjectures, or remote possibilities.] [serious injury that is clearly imminent. Such a determination shall be made on the basis of facts and not merely on allegation, conjecture, or remote possibility]; and

[**Transition period** means [the ten (10) year period beginning on the date of entry into force of this Agreement.] [the period during which a Party may adopt and maintain safeguard measure that shall cover, for each good, (...)] [the period of tariff elimination applicable to each good under this Agreement.]]

Section B Substantive Provisions

Subsection B.1 [FTAA Safeguards]

Article 2. Scope of Application

2.1. A Party may, on the terms set forth in this Chapter, apply an [FTAA]¹ safeguard measure, on imports of goods benefiting from the Tariff Elimination Program under this Agreement, [at any time that this Agreement is in force] [only during the transition period.²] [Such a measure [shall] [may] be applied to all imports of such goods originating in the territories of the Parties.]

[2.2. A customs union [, notwithstanding the provision set forth in Article 2.1.,] may apply safeguard measures as a single entity or on behalf of one of the State Parties:

- a) As a single entity, in which case the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in the customs union as a whole.
- b) On behalf of one of its State Parties, in which case the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in the State Party of the customs union and the measure shall be limited to that State Party.]

[2.3. A Party may [not] [adopt or] maintain an [FTAA] safeguard measure subsequent to the termination of the transition period, provided that the purpose is to deal with cases of serious injury or threat thereof that might arise [derived from a tariff decrease] due to the implementation of this Agreement [and only when the exporting Party expressly authorizes it].]

[2.4. Safeguard measures shall not be applied to a good [originating] in a Party when that Party's share of total imports of the good in question [into the Party taking the measure] does not exceed [...] [five (5)] or [...] percent [on the last twelve (12) months previous to the presentation of the request for which information is available]³ [on the last twelve (12) months of the period analyzed for purposes of determining the existence of serious injury] in the case of [smaller economies and/or economies in different levels of development] [smaller economies].]

1 [The definition of FTAA safeguard is pending.]

2 [The definition of transition period is pending.]

3 [The amount of percentages to be differentiated and their levels, as well as countries benefiting from this treatment, will be determined in the course of the negotiating process, taking into account the differences in the levels of development and sizes of the economies of the Hemisphere, including those of the smaller economies.]

2.5. A Party shall not apply an [FTAA] safeguard measure and a global safeguard measure simultaneously on a similar or direct competitive good.

Article 3. Conditions for Application

3.1. [A Party may only apply, following an investigation, a safeguard measure to the imports of a good that benefits from the Tariff Elimination Program established in this Agreement, when [as a result of the tariff preferences granted] [under this Agreement] the imports under the preferential tariffs for this good have increased in such an amount, in absolute terms [and] [or] in relation to [the totality of the] [domestic] production [or with the domestic consumption], [and] [or] under conditions such as to [alone][constitute a substantial cause] cause [of] serious injury or threat thereof to the domestic industry producing like or directly competitive goods.] [In determining whether imports have increased, a Party shall cumulatively consider imports from the territories of all other Parties to this Agreement.] [that has determined that they individually represent a substantial share of total imports and that they significantly contribute to the injury caused to the domestic production.]

3.2. A Party shall apply safeguard measures, following an investigation, only to the extent necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry affected.

[3.3. Before applying a [definitive] safeguard measure, each Party [shall examine and determine the feasibility of the] [adjustment plan] [presented by the domestic industry]. The Party that applies the measure shall provide the other Parties with a non-confidential summary of the plan.]

[3.4. Any decision to adopt provisional or definitive safeguard measures shall not affect imports of goods shipped on or before the date in which that decision was issued.]

Article 4. Nature of the Measures

4.1. The safeguard measures shall [only] consist of tariff measures [or may consist of quantitative restrictions]. [Neither tariff rate quotas nor quantitative restrictions shall be a permissible form of safeguard measure.]

4.2. Tariff measures shall consist of:

- a) [the suspension of further reductions of any rate of duty provided for under this Agreement for the good] [the suspension of the increase in preferences scheduled in the Agreement]; or
- b) [an increase in the rate of duty] [the reduction or suspension of the agreed margin of preference [for that good according to the Tariff Elimination Program established in this Agreement]] for the good, to a level not to exceed the lesser of:
 - i) the most-favored nation applied rate of duty in effect at the time the measure is applied; [or]
 - ii) [the most-favored-nation applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement] [the base tariff as provided by on Article XX.X.]. [; or]

- (c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the most-favored-nation applied rate of duty that was in effect on the good for the corresponding preceding season or for the corresponding season immediately preceding the date of entry into force of this Agreement, whichever is less.]

[4.3. [When the safeguard measure consists of a quantitative restriction] [The preference applicable] [that corresponds to the good according to the Tariff Elimination Program established in this Agreement] at the time the safeguard measure is applied [it] shall remain in place for a certain volume of imports, which shall be defined as the average of imports made over the last [...] [three (3)] immediate representative years [for which statistics are available, unless there is clear justification] [[preceding] the period during which it was determined that there was serious injury or threat thereof, unless [the Parties involved agree that there exists]] [of] the need to set a different [level] [quota] [is justified] so as to prevent or remedy serious injury.]

[4.4. On the termination of an [FTAA] safeguard measure, the rate of duty shall be no higher than the rate that, according to the Tariff Elimination Program of this Agreement, would have been in effect [on that date] [one (1) year after the initiation of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall, at its option:

- a) apply the rate of duty set out in the Tariff Elimination Program of this Agreement as if the hemispheric safeguard measure had never been applied, or
- b) eliminate the tariff in equal annual stages ending on the date set out in the Tariff Elimination Program of this Agreement for the elimination of the tariff].]

Article 5. Period of Application of the Measures

[5.1. [Except in certain fully justified circumstances] Safeguard measures may not be applied before [the preference has been in force for] one (1) year [from the beginning of the tariff elimination established in this Agreement, for the good subject to the measure].]

5.2. Safeguard measures may be applied for a maximum period of [...] [one (1)] [three (3)] [four (4)][year[s]] [[and] [or] (...)]⁴ for the smaller economies [and/or economies in different levels of development]] which shall include [in both cases] any period in which provisional measures had been in force. [[In order to facilitate adjustment in a situation where] [Where] the expected duration of an [FTAA] safeguard measure is over one (1) year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application of the safeguard.] [If the duration of the measure exceeds (...) years, the Party applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization.]

[5.3. Safeguard measures may be extended for a period of [...] [one (1) year], [once only] [and [...]]⁵ [four (4) additional years] for the smaller economies and/or economies in different levels of development], [if its application period has not exceeded three (3) years] when it has been determined that, in accordance with the procedures set out in [the first part of] this Chapter, it continues to be necessary to prevent or

⁴ The differentiated period would be determined in the course of the negotiations, taking into account the differences in the levels of development and sizes of the economies of the Hemisphere, including those of the smaller economies.

⁵ [The differentiated period would be determined in the course of the negotiations, taking into account the differences in the levels of development and sizes of the economies of the Hemisphere, including those of the smaller economies.]

remedy serious injury, and that there is evidence that the domestic industry [is adjusting] [has completed the adjustment program].] [Extended measures shall not be more restrictive than the original measures].

[5.4. Any safeguard measure shall enter into effect no later than one (1) year after the date on which the procedures are initiated.]

5.5. [A Party may [not] apply a safeguard measure against the same good more than once during the transition period.] [Safeguard measures may be applied to the importation of a good that has been subject to such a measure, provided that a period equal to that of the previously imposed measure has elapsed.]

Subsection B.2 [Procedures and Common Provisions⁶]

[Article 6. Investigation Procedures and Transparency Requirements]

[6.1. Each Party shall designate a competent authority to conduct investigations and determine whether increased imports [are] [alone] [a] [substantial] [cause] [of] serious injury or threat thereof. The competent authority shall evaluate, on the basis of objective evidence, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry affected, in particular:

- a) [the volume of the imports of the good and the conditions under which they occur][the rate and amount of the increase in imports of the goods concerned in absolute terms and in relation to the totality of production or domestic consumption];
- b) the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment;
- c) if increased imports of the good [[and][or] the conditions under which the imports are made] [constitutes [alone] a] [substantial][direct] cause [of] serious injury or threat thereof to the domestic industry; and
- d) other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital].

[6.2. A Party will apply a safeguard measure only if [it has been shown based on objective evidence the existence of a causal relationship between the increase of the imports and serious injury or threat thereof.] [increased imports of the goods originating in the territories of the Parties are [alone] a substantial cause of serious injury or threat of serious injury].] [If there are [known] factors other than the increased imports of the goods that simultaneously injure or threaten to injure a domestic industry, the injury may not be attributed to imports made under preferential tariffs.]

[6.3. The petition to initiate an investigation shall provide a description of the imported good concerned [and such information with respect to each of the factors as is reasonably available to the petitioner].[, information on the petitioner and his/her representation, data on imports, data on domestic output, data demonstrating injury or threat of injury, and cause of the injury or threat of injury [and an adjustment plan proposal].]

⁶ [The NGMA has not yet defined whether disciplines under this Subsection B.2 [Procedures and Common Provisions] will apply only to FTAA safeguard measures or also to global safeguards.]

[6.3. The petition to initiate an investigation shall include the following data:

- a) description of the good: name and description of the imported good concerned, the tariff [subheading] [classification] under which it is classified and the current tariff treatment, as well as the name and the description of the like or directly competitive domestic good;
- b) representation;
 - i) the names and addresses of the entities [or businesses] submitting the petition;
 - ii) the percentage of the domestic production of the like or directly competitive good of such entities [or businesses] and the reasons that lead them to state that they are representative of the domestic industry; and
 - iii) the name and addresses of the other domestic establishments that produce like or directly competitive goods.
- c) the official imports data corresponding [to the last [three (3)][five (5)] full years] [at least thirty-six (36) months] immediately preceding the submission of the petition;
- d) figures on total domestic production of the like or directly competitive good, for [each of the last [three (3)][five (5)] full years][at least thirty-six (36) months] immediately preceding the submission of the petition;
- e) data that demonstrates the share of the domestic market taken by increased imports, the changes in the level of sales, exports, prices, production, productivity, capacity utilization, profits or losses, and employment [from enterprises submitting or represented in the petition, regarding the like or directly competitive good, for a period of at least thirty-six (36) months preceding the submission of the petition];
- f) the basis for alleging that the increase in imports of that good, with relation to the domestic industry, is the cause of the serious injury or threat thereof, supported by relevant information; and
- g) the adjustment plan proposal]

6.4. A Party may initiate an investigation on [its own motion or on] the basis of a petition filed by [or in representation of] a domestic industry of a like or directly competitive good. [The petition shall be considered to have been made by the domestic industry or on behalf of the industry when it is supported by domestic producers whose combined production represents more than [...] [fifty (50)] percent of the total production of the like or directly competitive good.] [A public version of any petition, with any confidential information deleted or summarized in accordance with Article XX of this Chapter, shall promptly be made available for public inspection upon being filed.]

[6.5. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions, and rulings governing all proceedings under this Chapter.]

6.6. During the course of the investigation, the competent authority shall:

- a) give all interested parties the opportunity to:

- i) have [rapid and complete] access to the non-confidential version of the file, including the opportunity to inspect promptly after the filing of the petition a public version of any request under Article 6.3. [or of any confidential action from the other interested parties.] [To this effect, the Parties may have recourse to any of the mechanisms established in Article 6.3.e).] Access should be granted [in sufficient time to defend their interests] [within seven (7) days of having presented said request] [at any time, having previously indicated a convenient day and time for them to do so. Where the requested date is unavailable, the authority shall set a new date for the consultation, which shall be scheduled for no more than three (3) days after the requested date.];
 - ii) present evidence;
 - iii) prepare and express their views; and
 - iv) request that a public hearing be held or to appear in person or through representatives at a hearing called by the investigating authority, and there to question the interested parties and to be heard with regard to the serious injury or threat thereof, and the appropriate remedy, and as to whether or not the application of the safeguard measure would be in the public interest. The competent authority shall provide [to the interested parties][reasonable advance][notice][at least fifteen (15) days in advance] of any hearing.
- b) [except under critical circumstances and in the case of [provisional] safeguard measures [for perishable agricultural products,]][complete the procedures under Article 6.6.a) before issuing an affirmative ruling in a procedure to adopt a safeguard measure;]
- [c) upon cause being shown, treat as confidential information any information which is by nature confidential or which is provided on a confidential basis, and not disclose such information without permission of the party submitting it;]
- [c) deny access to:
- i) confidential commercial information, meaning any information whose dissemination could result in substantial or irreversible financial injury or property damage to the owner of such information; for example, secret formulas or processes with commercial value that are unpatented and known only to an exclusive and limited group of persons who use them in the production of a good; production costs and identity of the components; distribution costs, terms and conditions of sale, except for those offered to the public; price of sale per transaction and per good, except for price components such as dates of sales and distribution of the good, as well as transportation, if it is based on public routes; description of the kind of individual clients, distributors or suppliers; and any other specific information from the company in question or such information as it provides from related companies, subsidiaries, suppliers, clients or distributors;
 - ii) government information found in the laws and other provisions governing public order, and the content of internal communications of the investigating authority, of the investigating authority with other governmental entities, or confidential communications between governments;]
- d) require parties providing confidential information to furnish non-confidential summaries thereof [that shall be sufficiently detailed to permit a reasonable understanding of the information presented as confidential] or, if such party indicates that such information cannot

be summarized, the reasons why a summary cannot be provided except that, if the competent authority finds 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; and

- [e) in order to facilitate access of interested parties to the file, be able to:
- i) require that interested parties send to the other interested parties copies of each of the reports, documents and means of public evidence, or of the non-confidential summaries on the same day that they are presented to the investigating authority; or
 - ii) implement mechanisms that allow interested parties to take cognizance of the existence of such proceedings no later than five (5) working days following presentation thereof and shall provide for swift and thorough mechanisms to enable access to such proceedings whenever the interested parties so require.]

[6.7. The Parties shall reform their domestic legislation on safeguards with a view to providing for the following mechanisms:

- a) a mechanism that provides prompt access, to all the information contained in the administrative file, for representatives of the interested parties during the procedure, including confidential information, provided that the requirements established in domestic legislation are fulfilled;
- b) a commitment to confidentiality to which the representatives of the interested parties shall be held, strictly prohibiting the use of information for personal benefit and dissemination thereof to individuals not authorized to receive such information; and
- c) specific sanctions for breach of commitments made by representatives of interested parties.]

[6.8. Within (...) days after concluding the investigation, the competent authority shall publish a report that sets out its findings and reasoned conclusions on all the pertinent issues of law and fact. Such report shall be notified to the other affected Parties promptly.] [The statement of reasons shall provide a description of the imported good concerned, the standard applied, and the findings made, including the public information supporting a finding that each of the requirements for imposing an [FTAA] safeguard measure pursuant to Article XX is met.]

[6.9. The importing Party shall publish in its official journal:

- a) a notice on the opening and a notice of conclusion of a safeguard investigation;
- b) a notice of [adoption of the][definitive] safeguard measure [and of the provisional safeguard measure][and the amount and duration of the measure; and]
- c) a notice of [initiation of a proceeding relating to the] extension of a safeguard measure [and any decision to extend a measure.]]

[The information published in the notice shall contain a summary of the criteria that served as the basis for the corresponding ruling.]

6.10. The Parties shall provide that the decisions of the competent authorities issued in accordance with the stipulations of this Chapter are subject to judicial [or administrative] review, as laid down in their domestic legislation. [Negative rulings on the existence of serious injury or threat thereof may not be modified by the competent authority on its own motion.]

[6.11. The period for the investigation shall not be longer than one (1) year after the date on which the procedures are initiated.] [Except in special circumstances, investigations shall be concluded within ninety (90) days after their initiation, and in any case, after one hundred eighty (180) days after their initiation.]

[Article 7. Notification and Consultations]

[7.1. [The importing Party shall give prompt written notification [to the other Parties] of [its intention to initiate] [the initiation of] a safeguard investigation [under Article XX]. The notification shall [include] [be made in writing by the competent authority [in a period of (...)] [the day following] [[after] [as of] publication] [as of the initiation of the investigation]. It shall contain [the main features of the facts under investigation, such as] [sufficient background information to support the [application of the measures] [opening of the investigation], including to the extent that such information is available at the time of the initiation of the investigation]]]:

- [a] [if the investigation is initiated on the basis of a petition or complaint,] the names and available addresses of the petitioners [,their share in the domestic industry of that good,] and the reasons leading them to claim that they are representatives of the domestic industry,]
- [b] a clear, comprehensive description of the good subject to the proceeding, including its tariff classification, and the current tariff treatment thereof, as well as a description of the like or directly competitive good,]
- [c] import data [corresponding to each of the (...) most recent years] supporting the argument that this good is being imported in ever increasing quantities, [either in absolute terms or relative to domestic production or consumption],]
- [d] data on the domestic industry of the like or directly competitive good [corresponding to the last (...) years];]
- [e] other data that [demonstrates] [[was taken into consideration to demonstrate] the existence of] serious injury or threat thereof caused by the imports to the sector concerned, in accordance with the data referred to in Articles 7.1.c) and 7.1.d);]
- [f] a list and description of the alleged causes of serious injury or threat thereof, based on the information required pursuant to Articles 7.1.a) through 7.1.d), and a summary of the basis for claiming that the increase in imports of the good, [in absolute terms or relative to the domestic production or consumption,] is the cause thereof;]
- g) the deadline by which interested parties may submit evidence and set forth their opinions in writing, so that they may be taken into consideration during the investigation;
- h) the deadline for holding consultations.

- [i) the information on the applicable statutes;]
- [j) the date and place of the public hearing;]
- [k) the place where the request and other documents presented during the procedure can be inspected; and]
- [l) the name, address and telephone number of the office where more information can be obtained.]]

[7.2. The [ruling by which a decision is made to adopt or extend] [determination to apply] a safeguard measure shall be published [as applicable] and the other [Party] [Parties] shall be notified within a period of (...). The [ruling] [notification] shall contain [the publicly available findings of the investigation and the reasoned conclusions regarding all the pertinent questions of fact and law, including a description of]:

- [a) evidence of the existence of serious injury or threat thereof;]
- b) a precise description of the good in question (including its tariff classification according to the HS);
- c) the description of the measure proposed or applied;
- d) date of its entry into force and its duration;
- [e) when applicable, the criteria and objective information that show that the circumstances laid down in this Chapter for the application of a measure [to the other Party; in the time period established for holding consultations [to determine compensation]; and in the case of extension of a measure, information should also be furnished to show that the industry in question is adjusting.] [has complied with the adjustment program]] and
- f) [the domestic industry that has suffered or is threatened by serious injury.]]

[7.3. The notification of application of a provisional safeguard measure should contain the main characteristics of the non-confidential facts, including evidence that generated the need of the provisional safeguard and the precise description of the good subject to this measure.]

[7.4. A Party may not [adopt definitive measures] [apply or extend a safeguard measure under this Chapter] without having afforded an opportunity for consultations, the objective of which shall be a mutual knowledge of the public facts, the exchange of opinions, and reach a mutually satisfactory solution. The time period for such consultations shall be (...).]

[7.5. The notification of extension of a safeguard measure shall be made at least (...) days prior to the scheduled expiration date of the measure.]

[Article 8. Provisional Safeguards]

[8.1. In critical circumstances where delay would cause damage to the domestic industry producing a like or directly competitive good which it would be difficult to repair, a Party may apply a provisional

safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports [[and][or] the conditions under which these imports are made] are a result of the reduction or elimination of a duty pursuant to the Tariff Elimination Program of this Agreement and are causing or threatening to cause serious injury.]

[8.2. A provisional safeguard measure may only be applied after a period of (...) has elapsed from the [initiation of the investigation] [receipt of the request from the petitioner.]]

[8.3. The duration of a provisional safeguard measure shall not exceed [...] [two hundred (200) days] [and shall adopt one of the forms provided for in Article 4.2.].]

[8.4. If the subsequent investigation shows that the increase in imports under preferential tariffs or the conditions of those imports [have not caused or threatened to cause serious injury] [are not a substantial cause of serious injury or threat thereof] to the domestic industry in question, the investigation shall be closed and the amount received under the temporary measures [including interests] shall be reimbursed promptly or, when such is the case, the bond posted for the purpose shall be released.]

[8.5. The Parties shall not apply provisional safeguard measures to goods from smaller economies.]

[Article 9. Rights of the Affected Parties]

[9.1. A Party applying a safeguard measure shall, following consultation with Parties that are substantial suppliers of the good concerned, provide to such substantial suppliers mutually agreed trade liberalizing compensation in the form of:

- a) [tariff] concessions having substantially equivalent trade effects, or
- b) [concessions equivalent to the value of the additional duties [expected to result from the application of the safeguard measure]]].

9.2. [Consultations shall begin within thirty (30) days of the imposition of the measure. If no agreement is reached within thirty (30) days after these consultations commence, any Party that is a substantial supplier shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.]

[9.3. If the Parties are unable to agree on a satisfactory solution, the affected Party or Parties may adopt tariff measures having substantially equivalent trade effects to the measure applied.]

[9.4. The obligation to provide compensation and the right of suspension of substantially equivalent concessions shall terminate upon the later of: a) the termination of the safeguard measure, or b) if the Party applying the safeguard measure terminates such measure in accordance with Article XX, the date on which the rate of duty returns to the rate of duty set out in the Tariff Elimination Program.]

[9.5. Parties with small economies shall not undertake any obligation under this Chapter to provide compensation as a result of the imposition of a safeguard measure.]

[Article 10. Safeguards for Specific Sectors]

Article 11. Global Safeguards

11.1. Each Party preserves its rights and obligations pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards. [This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards.]

[11.2. The Party that decides to adopt a global safeguard measure may only apply it to the imports of another Party when it determines that said imports, taken individually, represent a substantial share of the total imports and contributes significantly to the serious injury or to the threat of serious injury.]

[11.3. In order to make this determination, the following criteria shall be observed:

- a) imports of goods from the other Party shall be considered substantial if they are included among the (...) main supplier countries of the good. By way of exception, imports from another Party shall be considered substantial if they are included among the ten main supplier countries of the good to the importing Party when, as a whole, they account for over twenty-five percent (25 %) of said imports;
- b) imports of goods from another Party shall not be considered to contribute significantly to the serious injury or threat of serious injury, if their rate of growth during the period in which the injurious increase thereof took place is lower than the rate of growth of the total imports over the same period.]

[11.4. The Party applying the measures and that has initially excluded another Party's good from it shall be entitled to include determines that an increase in the imports of said good from the excluded Party causes or threatens to cause serious injury and as a result reduces the effectiveness of the measure.]

Section C Procedures and Institutions

[Article 12. Dispute Settlement for matters related to safeguard measures]

[12.1. No Party may request the establishment of an arbitral group, pursuant to the provisions in the Chapter on Dispute Settlement, with regard to safeguard measures that have merely been proposed.]

ANNEXES