

**CHAPTER 4**  
**TRADE REMEDIES<sup>4</sup>**

**Article 6: Bilateral Safeguard Measures**

Article 27 of Chapter V (Trade Remedies) of the Free Trade Agreement shall be deleted and substituted entirely by a new Article 27 which reads as under:

**1. Definition**

For the purpose of this Chapter:

- (i) **Competent authority** means:
- (a) in the case of China, the Ministry of Commerce, or its successor; and
  - (b) in the case of Pakistan, the Ministry of Commerce, or its successor;
- (ii) **Domestic industry** means, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;
- (iii) **Safeguard measure** means a measure described in paragraph 2(ii);
- (iv) **Directly competitive product** refers to the product which, having different physical characteristics and composition to those of the imported product, fulfills the same functions of the latter, satisfies the same needs, and is commercially substitutable;
- (v) **Like product** refers to the identical product, that is, the product that is the same in all aspects as the imported product, or in the absence of such a product, to another product which, in spite of not being the same in all aspects, has characteristics closely resembling to those of the imported product;

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<sup>4</sup> For greater certainty, this Chapter shall constitute an integral part of Chapter V (Trade Remedies) of the Free Trade Agreement, and the provisions of Chapter V (Trade Remedies) of the Free Trade Agreement that are not substituted by this Protocol shall remain in force.

- (vi) **Serious injury** means a significant overall impairment in the position of a domestic industry;
- (vii) **Threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and
- (viii) **Transition period** means ten years for the products under Categories A-0 and MOP1 as indicated in Annex 1-A; for the products under Categories A-5, A-7, A-10, A-15 and MOP2 as indicated in Annex 1-A, transition period means the period beginning from the starting date of tariff elimination or reduction and ending eight years from the date of completion of tariff elimination or reduction for that product.

## **2. Imposition of a Bilateral Safeguard Measure**

- (i) A Party may apply a measure described in paragraph 2(ii), during the transition period only, if as a result of the elimination or reduction of a customs duty pursuant to this Protocol, or as a result of unforeseen developments in conjunction with the existence of a preferential tariff under this Protocol, an originating product is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof to a domestic industry producing a like or directly competitive product;
- (ii) If the conditions in Paragraphs 2(i) are met, a Party may, to the extent necessary to prevent or remedy serious injury, or threat thereof to facilitate adjustment:
  - (a) suspend the further reduction of any rate of duty provided for under this Protocol on the product;
  - (b) increase the rate of duty on the product to a level not to exceed the lesser of:
    - (1) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is taken, and

(2) the MFN applied rate of duty in effect on the date of entry into force of this Protocol;<sup>5</sup>

- (iii) On the termination of a safeguard measure, the rate of duty shall be the duty set out in Annex 1-A of this Protocol as if the measure had never been applied.

### **3. Standards for a Definitive Bilateral Safeguard Measure**

- (i) Neither Party shall maintain a safeguard measure:
  - (a) except to the extent and for such time as may be necessary to prevent or remedy serious injury or threat thereof, and to facilitate adjustment;
  - (b) for a period exceeding three years, except that the period may be extended by up to two years if the competent authority determine that the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment, and that there is evidence that the industry is adjusting;
  - (c) beyond the expiration of the transition period, except with the consent of the Party against whose originating product the measure is taken;
- (ii) No safeguard measure shall be applied again to the import of a product which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

### **4. Notification, Investigation and Consultation**

- (i) A Party shall promptly notify the other Party when:
  - (a) initiating an investigation under this Article;
  - (b) applying a provisional measure;

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<sup>5</sup> The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of a safeguard measure.

- (c) making a finding of serious injury or threat thereof caused by increased imports;
  - (d) taking a decision to impose or extend a definitive safeguard measure;
- (ii) In making the notification referred to in paragraph (i)(b) and (i)(c), the Party proposing to apply or extend a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the product involved and the proposed measure, proposed date of introduction and expected duration; the Party proposing to apply a measure shall also provide any additional information which the other Party considers pertinent;
  - (iii) A Party proposing to apply a measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on compensation set out in Paragraph 5;
  - (iv) A Party shall apply the measure only following an investigation by the competent authority of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made a part of this Protocol, *mutatis mutandis*;
  - (v) In undertaking the investigation described in paragraph 4(iv), a Party shall comply with the requirements of Article 4.2(a) and (b) of the WTO Agreement on Safeguards; and to this end, Article 4.2(a) and (b) are incorporated into and made a part of this Protocol, *mutatis mutandis*;
  - (vi) The investigation shall in all cases be completed within one year following its date of initiation.

## **5. Compensation for Loss of Trade and Suspension of Concessions**

- (i) A Party applying a safeguard measure for an overall period beyond 3 years shall, in consultation with the other Party, provide mutually-agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties

expected to result from the measure during the period of extension of the measure beyond the aforementioned 3 years. The Party applying the safeguard measure shall provide opportunity for such consultations no later than 45 days after the decision to extend the measure. Such consultations shall take place prior to the effective date of the extension;

- (ii) If the Parties are unable to reach agreement on compensation within 45 days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure;
- (iii) The exporting Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 5(ii);
- (iv) The obligation to provide compensation under paragraph 5(i) and the right to suspend concessions under paragraph 5(ii) shall terminate on the date of the termination of the safeguard measure.

## **6. Provisional Bilateral Safeguard Measures**

In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional safeguard measure shall not exceed 180 days, during which period the pertinent requirements of paragraph 2, 3 and 4 shall be met. Such a provisional safeguard measure shall take the form of an increase in the rate of customs duty not exceeding the lesser of the rates in paragraph 2(ii), which shall be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a safeguard measure.