

CHAPTER EIGHT SAFEGUARDS

ARTICLE 8.1: APPLICATION OF A SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement;
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of
 - (i) the most-favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken, and
 - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement; or
- (c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the lesser of
 - (i) the MFN applied rate of duty on the good in effect for the immediately preceding corresponding season, and
 - (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

ARTICLE 8.2: CONDITIONS AND LIMITATIONS

1. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 2 and shall consult with the other Party as far in advance of

applying a safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

2. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to this end, Article 4.2(a) is incorporated into and made a part of this Agreement, *mutatis mutandis*.

4. Neither Party may apply a safeguard measure against a good:

- (a) except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment;
- (b) for a period exceeding three years, except in the case provided for under Article 8.3; or
- (c) beyond five years after the Party applying the measure must eliminate customs duties on that good pursuant to its Schedule to Annex IV (Tariff Elimination), except with the consent of the other Party.

5. Neither Party may apply a safeguard measure more than once against the same good.

6. Where the expected duration of the safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.

7. On the termination of the safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex IV (Tariff Elimination), would have been in effect but for the measure.

ARTICLE 8.3: EXTENSION

If the competent authorities of a Party determine, in conformity with the procedures set out in Article 8.2, that a safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is

adjusting, the Party may extend the application of the safeguard measure for up to an additional two years.

ARTICLE 8.4: PROVISIONAL MEASURES

In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a safeguard measure on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 8.2.2 and 8.2.3. The Party shall promptly refund any tariff increases if the investigation described in Article 8.2.2 does not result in a finding that the requirements of Article 8.1 are met. The duration of any provisional measure shall be counted as part of the period described in Article 8.2.4(b).

ARTICLE 8.5: COMPENSATION

A Party applying a safeguard measure shall endeavor to provide to the other Party 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. If the Parties are unable to agree on compensation within 30 days from the date the Party announces a decision to apply the measure, the other Party may take tariff action having trade effects substantially equivalent to the safeguard measure. The Party shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects and, in any event, only while the safeguard measure is being applied.

ARTICLE 8.6: GLOBAL SAFEGUARD ACTIONS

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement.

ARTICLE 8.7: DEFINITIONS

For purposes of this Chapter:

competent authorities means (a) for Morocco, the Ministry of Foreign Trade, and (b) for the United States, the United States International Trade Commission;

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

safeguard measure means a measure described in Article 8.1;

serious injury means a significant overall impairment in the position of a domestic industry;

substantial cause means a cause that is important and not less than any other cause; and

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.