

ANNEX VIII

REFERRED TO IN ARTICLE 4.2

INVESTIGATION AND TRANSPARENCY PROCEDURES

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INVESTIGATION AND TRANSPARENCY PROCEDURES

ARTICLE 1

Initiation of an Investigation

1. A State Party may only initiate an investigation regarding the application of a bilateral safeguard measure provided that there is sufficient evidence to justify such initiation, upon request of the domestic industry or on its behalf.
2. Each State Party shall apply transparent, effective and equitable procedures for the impartial and reasonable application of bilateral safeguard measures, in accordance with this Annex.

ARTICLE 2

Request to Initiate an Investigation

The request to initiate an investigation shall contain at least the following information:

- (a) name and description of the imported product concerned, its tariff heading and the tariff treatment applied;
- (b) name and description of the like or directly competitive products;
- (c) names and addresses of the producers or association submitting the request;
- (d) names and addresses of other known producers of the like or directly competitive products; and
- (e) evidence that the conditions for imposing the safeguards measures set out in Article 3 (Determination of Serious Injury or Threat Thereof) are met, in particular:
 - (i) production volume of producers submitting or represented in the request and estimated volume of production of other known producers of the like or directly competitive products, during the period of data collection foreseen in paragraph 3 of Article 3 (Determination of Serious Injury or Threat Thereof) , for which information is available;
 - (ii) rate and amount of the increase in total and bilateral imports of the product concerned in absolute and relative terms, during the period of data collection foreseen in paragraph 3

of Article 3 (Determination of Serious Injury or Threat Thereof), for which information is available;

- (iii) level of import prices during the same period; and
- (iv) if information is available, objective and quantifiable data regarding the like or directly competitive products, on the volume of total production and total sales in the internal market, inventories, prices for the internal market, productivity, capacity utilisation, employment, profit and losses and market share of the requesting firms or of those represented in the request, during the period of data collection foreseen in paragraph 3 of Article 3 (Determination of Serious Injury or Threat Thereof).

ARTICLE 3

Determination of Serious Injury or Threat Thereof

1. The investigation to determine the existence of serious injury or threat thereof as a result of increased imports of a product under preferential terms shall take into consideration all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry affected. It shall particularly consider the following:

- (a) specific factors relating to imports, including at least:
 - (i) amount and rate of the increase in preferential imports of the product concerned in absolute and relative terms;
 - (ii) share of the internal market of the importing State Party taken by increased preferential imports;
 - (iii) price of the preferential imports; and
 - (iv) relationship between the preferential and non-preferential imports, as well as between the increase of one and of the other;
- (b) the consequent impact on the domestic industry of the like or directly competitive products based on factors, including production, productivity, capacity utilisation, inventories, sales, market share, prices, profits and losses, return on investment, cash flow and employment;
- (c) the existence of a causal link between the increased imports of the product under preferential terms and the serious injury or threat thereof to the domestic industry; and
- (d) other factors that, although not related to the evolution of preferential imports, may have a causal relationship with the injury or threat thereof to the domestic industry in question.

2. The competent investigating authority shall demonstrate, on the basis of objective evidence, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof, and shall also evaluate all

known factors other than increased imports under preferential terms of the Agreement that might be at the same time causing injury to the domestic industry. Special attention should be paid in cases where imports increase also from other sources since their effect shall not be attributed to the imports of products under preferential terms.

3. The period of data collection for the investigation to determine serious injury or threat thereof should consist of at least the last 36 months prior to the request to initiate an investigation, unless otherwise justified.

ARTICLE 4

Confidentiality

1. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent investigating authorities. Such information shall not be disclosed without explicit permission of the interested party submitting it. Interested parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such interested parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent investigating authorities find that a request for confidentiality is not warranted and if the interested party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the investigating authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

2. If information regarding production, production capacity, employment, wages, volume and value of domestic sales, or average price is presented on a confidential basis, the investigating authorities shall ensure that meaningful non-confidential summaries disclosing at least aggregated data or, in cases in which the disclosure of aggregated data would endanger the confidentiality of the company's data, indexes for each 12 month period under investigation are submitted, so as to ensure the appropriate right of defence of the interested parties. In this regard, confidentiality requests should be considered in situations in which particular market or domestic industry structures so justify. This provision shall not prevent the presentation of more detailed non-confidential summaries.

ARTICLE 5

Timeframe of the Investigation

The period between the date of publication of the decision to initiate the investigation and the publication of the final decision shall not exceed 12 months. A State Party shall not apply bilateral safeguard measures if this timeframe has not been observed by the competent investigating authorities.

ARTICLE 6

Public Notice

1. Upon initiation of an investigation, the competent investigating authority shall issue a public notice of initiation of an investigation, which shall include information on the product under investigation, on the competent investigating authority and on the procedures and deadlines to be followed throughout the investigation concerning, inter alia, registration of interested parties, submission of documents and hearings.
2. Importers, exporters and other interested parties shall be given the opportunity to present evidence and their views, including the opportunity to respond to the presentations of other interested parties and to submit their views. Their views shall be taken into account by the competent investigating authorities.
3. Upon decision to apply a provisional bilateral safeguard measure and upon decision to apply or not a definitive bilateral safeguard measure, the competent authority shall issue public notices. Such public notices shall include information on the findings of the investigating authorities and reasoned conclusions reached on all pertinent issues of fact and of law.

ARTICLE 7

Notifications to Interested Parties

1. Within ten days from issuing a public notice pursuant to paragraphs 1 and 3 of Article 6 (Public Notice), the importing State Party shall notify the initiation of an investigation or decision to apply a provisional or definitive bilateral safeguard measure to the interested parties, accompanied by the appropriate public notice and, in case of initiation of an investigation, a copy of the request to initiate the investigation.
2. For the purposes of this Annex, “interested parties” means:
 - (a) exporters, foreign producers or importers of a product subject to investigation, or a trade or business association, a majority of whose members are producers, exporters or importers of such product;
 - (b) the government of the exporting State Party; and
 - (c) producers of the like or directly competitive products in the importing State Party or a trade and business association, a majority of whose members produces the like or directly competitive products in the territory of the importing State Party.
3. Paragraph 2 shall not preclude the State Parties from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

ARTICLE 8

Access to the File and Right to be Heard

1. Interested parties and representatives of the exporting State Party may, upon written request, consult all information available in connection with the investigation other than internal documents prepared by the investigating authorities, provided that such information is relevant to the presentation of their case, not confidential within the meaning of Article 4 (Confidentiality) and that it is used by the investigating authority in the investigation.
 2. The investigating authorities shall grant the right to be heard to the interested parties if they have made a written application within the period laid down in the notice published in accordance with Article 6 (Public Notice), showing that they are likely to be affected by the outcome of the investigation.
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