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Committee on Safeguards

NOTIFICATIONS OF LAWS, REGULATIONS AND
ADMINISTRATIVE PROCEDURES RELATING
TO SAFEGUARD MEASURES

ARGENTINA

The following communication, dated 24 October 1996, has been received from the Permanent Mission of Argentina.

AGREEMENT ON SAFEGUARDS

Decree 1059/96

General. Application for and Initiation of the Investigation. Investigation. Definitive Measures. Duration, Extension and Period of Application of Definitive Measures. Review of Measures. Liberalization Programmes. Provisional Measures. Final Provisions.

Buenos Aires, 19 September 1996

BEARING IN MIND File No. 030-001256/96 in the Registry of the Ministry of the Economy and Public Works and Services, and

Whereas:

The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, the Ministerial Decisions and Declarations and the Marrakesh Agreement was approved under Law No. 24,425;

The Agreement on Safeguards was approved within the above framework:

The Minister of the Economy and Public Works and Services was designated on 8 February 1996 as the implementing authority for the above-mentioned Agreement on Safeguards, contained in Law No. 24,425;

The Agreement establishes, for the purposes of applying a safeguard measure, that the measure shall follow an investigation by the competent authorities pursuant to previously established procedures that are made public, and it empowers the implementing authority to decide in urgent cases on the adoption of provisional measures;

The Agreement on Safeguards clarifies and reinforces the rules on the application of Article XIX of the General Agreement on Tariffs and Trade (GATT) 1994, one of the principal objectives of which is to eliminate and prohibit safeguard measures that do not comply with those rules, such as voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side;

Liberalization of imports, in other words, the absence of any type of quantitative restriction, is the basic rule of the common system applicable to imports;

It is for the implementing authority to decide on the safeguard measures required in the interests of the community and such interests must be

appraised as a whole, including in particular those of domestic producers, users and consumers;

Consequently, safeguard measures in regard to Members of the World Trade Organization may only be taken when the product in question is imported in very large quantities and under conditions which cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products, unless international obligations dispense with the application of such a rule;

It is necessary to define the notions of "serious injury", "threat of serious injury" and "domestic industry";

It is also necessary to establish time-limits for the initiation of investigations and to determine whether or not measures should be adopted, for the purpose of guaranteeing an expeditious procedure and thereby increasing the legal safety of the economic actors involved;

The maximum period for the application of safeguard measures must be established and specific provisions laid down for the extension, progressive liberalization and review of such measures;

This Decree is issued under Article 99, paragraph 2, of the National Constitution.

Wherefore,

The President of the Argentine Nation Decrees:

Title I

General

Article 1

The Ministry of the Economy and Public Works and Services shall be the implementing authority for the purposes of this Decree.

Article 2

For the purposes of this Decree, the following shall mean:

(a)"Agreement on Safeguards": the Agreement in respect of the implementation of Article XIX of the General Agreement on Tariffs and Trade 1994, approved by Law No. 24,425;

(b)"Secretariat": the Secretariat of Industry, Trade and Mining;

(c)"Undersecretariat": the Undersecretariat of Foreign Trade, part of the Secretariat of Industry, Trade and Mining, are the Ministry of the Economy and Public Works and Services;

(d)"Commission": the National Commission for Foreign Trade, a decentralized body of the Secretariat of Industry, Trade and Mining, of the Ministry of the Economy, Public Works and Services;

(e)"Committee on Safeguards": a body created by the Agreement on Safeguards under the Council for Trade in Goods, established within the organizational structure of the World Trade Organization;

(f)"Interested parties": any natural or legal persons, public or private, that, following the initiation of an investigation, invoke a right, without prejudice to whether the exercise of such right is contingent on compatibility with the public interest giving rise to the investigation, by virtue of the powers of the competent authority to evaluate the timeliness, merits and desirability of an application for a safeguard measure;

(g) "Days": consecutive days, unless otherwise specified;

(h)"Presentation of evidence": direct incorporation of any document or other item in the possession of the party submitting the evidence and which that party considers will assist in the investigation. Accordingly, such investigations shall preclude the procedure of submission of evidence by an interested party and evidence by the implementing authority;

(i)"Serious injury": a significant overall impairment in the position of domestic producers;

(j)"Threat of serious injury": the clear imminence of serious injury;

(k)"Domestic industry": the producers as a whole of the like or directly competitive products operating within the national territory or those whose collective output of the like or directly competitive products constitutes at least thirty (30) per cent of the total domestic production of those products;

(l)"Critical circumstances": those in which there is clear evidence that increased imports have caused or are threatening to cause serious injury and any delay in the adoption of a measure by the competent authorities that would entail damage to the domestic industry that would be difficult to repair.

Article 3

The interested parties in the investigation and representatives of exporting countries may see any information gathered in the course of the investigation, except information presented on a confidential basis, to which they shall not have access.

Article 4

Information shall be considered confidential if complete or partial disclosure could have adverse consequences for the party providing it and this has been so stated at the appropriate time by the Undersecretariat and the Commission respectively.

The interested parties may apply for the information that they provide to be treated as confidential in nature. Such an application must be made at the time the information is provided, with detailed reasons for the need for such treatment, together with the submission of a non-confidential summary.

Article 5

If the application for confidential treatment is incomplete, the implementing authority may request the interested party to supplement the application within a period of five (5) days. Otherwise, the competent authority may not grant the confidential treatment requested and the party providing the information shall withdraw the documents in question.

Article 6

Both the Undersecretariat and the Commission shall decide on requests for confidential treatment of information within five (5) working days from submission of the application. During this period, the information in question shall be treated confidentially, as described in this Decree.

If the parties providing confidential information state that it cannot be summarized, they shall state the reasons why this is impossible and the implementing authority shall consider the exception requested.

If the competent authority decides not to grant confidential treatment to particular information, the party providing it may choose to make the information non-confidential or withdraw it.

Title II

Application for and Initiation of the Investigation

Article 7

A safeguard measure may be applied only after an investigation conducted by the implementing authority in accordance with this Decree.

Article 8

The application shall be submitted to the Secretariat by the domestic industry that considers it is affected by the trend in imports, together with the requisite evidence to determine whether such exports are causing or threatening to cause serious injury.

The application must fulfil all the requirements established for that purpose in Annex I to this Decree, regardless of any requirements the implementing authority deems appropriate to establish in the future.

Article 9

The applicant shall include with the application an adjustment plan to place the domestic industry in question in a more competitive position, in keeping with the circumstances, demonstrating the efforts that the domestic industry would be willing to make for that purpose and also containing a clear quantification of the proposed goals and a time-frame to enable the Undersecretariat to monitor their attainment in the course of time.

Article 10

On receipt of the application, the Secretariat of Industry, Trade and Mining shall refer the matter to the Undersecretariat and to the Commission so that, within fifty (50) days from receipt, they issue a technical report on whether or not there exist increased imports of the product in question which have caused or threaten to cause serious injury:

(a) The Commission's report shall contain:

(i) A description of the facts that have motivated the application and of the domestic industry producing like or directly competitive products.

(ii)An analysis of the increased imports that have caused or threatened to cause serious injury to the domestic industry, both in absolute terms and in terms relative to the size of the domestic market.

(iii)An opinion concerning the serious injury or threat of serious injury to the domestic industry as a result of the imports, and an evaluation of the factors having a bearing on the situation of the industry such as the evolution and distribution of sales on the domestic market, prices, production, inventories, productivity, utilization of installed capacity, investment, economic performance, return on investments, cash flow and employment.

The above list is not exhaustive and may include other indicators which, in the opinion of the Commission, help in the preparation of the report.

(b) The Undersecretariat's report shall contain:

(i)Import trends, in particular when there has been a significant increase in imports, in absolute terms or relative to domestic production or consumption of the product in question.

(ii)Trends in the trade balance between the Argentine Republic and the country or countries exporting the product in question.

(iii)Share of exports to the Argentine Republic in total exports of the country or countries exporting the product in question.

(iv)Share of imports from the Argentine Republic in total imports by the country or countries exporting the product in question.

(v)Existing or planned trade integration and cooperation programmes between the Argentine Republic and the country or countries exporting the imported product.

(vi) Analysis of the effects of applying a safeguard measure, especially with regard to international trade between the Argentine Republic and the supplying country or countries. Account may also be taken of other repercussions with those countries in the context of economic relations.

(vii) Any opinion given by the sectors concerned - including producers, importers, consumer associations - about the situation under examination and any proposals they may have made.

(viii) Evaluation of the importance of the sector, for which purpose it shall be described, setting out more particularly information on, inter alia, numbers of persons employed, level of invoicing, investment in fixed capital, number and size of firms, contribution to the industrial gross domestic product and amount of exports.

(ix) Evaluation of compliance with Article 9.1 of the Agreement on Safeguards.

The above list is not exhaustive and may include other indicators which, in the opinion of the Undersecretariat, help in the preparation of the report.

Article 11

The Secretary of State of Industry, Trade and Mining shall examine the reports submitted by the Undersecretariat and the Commission and, in the light of public interest and overall economic policy, shall decide whether or not it is appropriate to initiate an investigation, within a period of twenty (20) days from receipt of the reports.

Article 12

When the Secretary of State of Industry, Trade and Mining decides that it is not appropriate to initiate an investigation, he shall forward the papers to the archives after notifying the firms and public or private associations or organizations which have provided information.

Article 13

When it is decided that it is appropriate to initiate an investigation, the decision shall be published in the Official Journal within ten (10) days following issue of the decision and shall be notified to the Committee on Safeguards pursuant to Article 12 of the Agreement on Safeguards. The initiation decision must, as a minimum, indicate:

(a) The identity of the applicant;

(b) the imported product under investigation and the tariff heading;

(c) the name(s) of the exporting country or countries and the necessary information to ensure proper identification of the product concerned and its origin;

(d) the causal link between the increased imports and the injury or threat of injury;

(e) the date for the hearing, before completion of the period of investigation, in which all interested parties accredited as such in the course of the process may participate and at which they may express their views on, among other things, whether or not the application of a safeguard measure would be in the public interest;

(f) particulars of the provisional measure to be adopted, should it prove appropriate.

Title III

The Investigation

Article 14

The duration of the investigation for the application of a safeguard measure shall not exceed nine (9) months from the initiation of the investigation. In exceptional circumstances, this period may be extended by a maximum of two (2) months. If it is appropriate to apply provisional measures, the maximum duration of the investigation shall be two hundred (200) days.

If, in the course of the investigation, the Secretary of State of Industry, Trade and Mining finds that safeguard measures are not necessary, he shall immediately proceed to declare the investigation terminated. A decision to terminate the investigation, together with a statement of the basic conclusions and the corresponding reasons, shall be published in the Official Journal.

Article 15

The Undersecretariat and the Commission shall, during this period, engage in any consultations they deem necessary to gather any information considered desirable and, when they believe it opportune, shall endeavour to verify such information, referring to importers, businessmen, representatives, producers, consumer associations and trade organizations.

On completion of the consultations, they shall submit their final conclusions and may elaborate on earlier arguments or confirm those in the report submitted under Article 10 of this Decree.

Article 16

On receipt of the final reports of the Commission and the Undersecretariat and of the observations of the interested parties, the Secretariat shall, within ten (10) days, invite representatives of the Member governments of the World Trade Organization having a substantial interest as exporters of the product under investigation to hold consultations to exchange views on the possible measure to be applied. The period of consultations may not exceed sixty (60) days from the dispatch of the invitations referred to in this Article.

The outcome of these consultations shall be set out in an official record.

Title IV

Definitive Measures

Article 17

On completion of the consultations, the Secretary of State of Industry, Trade and Mining shall examine the reports received and also evaluate the adjustment plan submitted and/or the attainment of the partial goals, together with the findings in the record and shall, within a period of ten (10) days, submit to the Minister for the Economy and Public Works and Services a report indicating whether or not a safeguard measure should be adopted.

If the reports submitted to the Secretary of State of Industry, Trade and Mining lead to a negative determination regarding the application of a safeguard measure, it will not be necessary to extend the invitations to hold the consultations referred to in the foregoing Article.

Article 18

If the conclusion is reached that a particular product is being imported into the Argentine Republic in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic production, the Minister of the Economy and Public Services may, within a period of fifteen (15) days from receipt of the reports submitted by the Secretary of State of Industry, Trade and Mining, arrange for the application of a safeguard measure to protect the general interest.

Article 19

Safeguard measures may take the form of:

- (a) An increase in import duty;
- (b) a quantitative restriction;
- (c) any other measure available to the implementing authority.

Article 20

If, in accordance with this Decree, it is decided to apply a safeguard measure and a quota is established, account shall be taken mainly of:

- (a) The interest in maintaining, as far as possible, traditional trade flows;
- (b) the volume of the product in question exported to the Argentine Republic under contracts concluded under normal conditions before the entry into force of a safeguard measure adopted pursuant to this Title, if such contracts have first been notified to the Secretary of State of Industry, Trade and Mining.

Article 21

No quota shall be less than the average of imports in the last three (3) representative years for which statistics exist, unless it is demonstrated that a different level is necessary to prevent or remedy serious injury.

Article 22

In cases in which a quota is allocated among supplying countries, the allocation may be made among supplying countries having a substantial interest in the imports of the product concerned.

Otherwise, the quota shall be allotted among such countries in proportion to the share of the imports of the product concerned during a previous representative period, account being taken of any special factor which may have affected trade in the product.

The implementing authority shall, in each case, decide on the terms and conditions for administering the quotas established under the definitive measure.

Article 23

Definitive measures shall apply to the investigated product cleared on national territory after the entry into force of such measures.

In this connection, the terms of Articles 618 et seq. of the Customs Code, Law No. 22,415, shall apply.

Article 24

Decisions to impose safeguard measures shall contain all the pertinent information on issues of fact and law and the reasons for imposing such measures.

They shall be published in the Official Journal within ten (10) days, specifying:

- (a) The product investigated;
- (b) the factors relating to the determination of the existence of serious injury;
- (c) the causal link between the increased imports and the injury or threat of serious injury;
- (d) the other reasons on which the measure is based;
- (e) a clear description of the form of the measure decided on;

Decisions containing negative determinations shall specify the issues of fact and law on which the Minister of the Economy and Public Works and Services has based his findings.

Article 25

Publication in the Official Journal will be sufficient notification of the measure adopted.

Notwithstanding the foregoing, the decision on positive or negative definitive measures shall be communicated to all the parties participating in the investigation.

Article 26

When the Minister of the Economy and Public Works and Services decides to apply definitive measures, he shall notify the Committee on Safeguards within fifteen (15) days of publication of the decision in the Official Journal. All the pertinent information shall also be transmitted to it and shall include the causal link between the injury or threat of injury and the increased imports, a precise description of the product involved and the proposed measure, the date of introduction of the measure and the expected duration, and the liberalization programme carried out in cases where it is appropriate.

Article 27

For the purposes of control and monitoring of the measure, the National Customs Administration, under a body the Secretariat of Finance of the Ministry of the Economy, Public Works and Services, shall report monthly to the Undersecretariat the data on volumes and values of imports subject to the measure, with a breakdown by origin and information on compliance with the established quota.

The Undersecretariat shall be responsible for supervising proper implementation of the measure adopted.

Title V

Duration, Extension and Period of Application of Definitive Measures

Article 28

The duration of a definitive safeguard measure shall be limited to such period of time as is necessary to prevent injury or threat of injury and to facilitate adjustment of the domestic industry affected. The period may not exceed four (4) years, including the period of application of any provisional measure.

Article 29

The initial period may be extended if the conclusion is reached that an extension is necessary to prevent or remedy injury or threat of injury and there is sufficient evidence that the domestic industry affected is adjusting and that an extension of the original measure will facilitate achievement of the adjustment.

Extensions of definitive measures shall be adopted by the same procedure as for the imposition of initial measures.

Article 30

The total period of application of a safeguard measure, including the period of application of any provisional measure, and any extension thereof, may not exceed eight (8) years, except under the terms of Article 9.2 of the Agreement on Safeguards.

Article 31

Pursuant to the Agreement on Safeguards and this Decree, a safeguard measure on imports of a product may not be requested, for a period of time equal to half that during which such measure has been previously applied. The period of non-application shall be at least two (2) years.

Notwithstanding the above, a further safeguard measure on imports of a product may be applied for a period one hundred and eighty (180) days or less, in the following circumstances:

(a) When at least one (1) year has elapsed since the date of introduction of a safeguard measure on the import of that product;

(b) when such a safeguard measure has not been applied on the same product more than twice in the five (5) year period immediately preceding the date of introduction of the measure.

Article 32

Decisions adopted in connection with an investigation or as a result thereof are not open to appeal.

Title VI

Review of Measures

Liberalization Programmes

Article 33

Any final measure for which the expected duration is over one (1) year shall include a scheme for progressive liberalization at regular intervals during the period of application.

The Undersecretariat shall be responsible for proposing the liberalization programme and shall submit it to the Secretary of State of Industry, Trade and Mining for his approval.

The original programme may be speeded up when the measure adopted exceeds three (3) years.

The implementing authority shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization.

Article 34

Pursuant to Article 33 of this Decree, the Secretary of State of Industry, Trade and Mining shall hold consultations to review the measures imposed. The purpose of the consultations shall be:

- (a) To examine the impact of the measure;
- (b) to consider whether it is appropriate to speed up the pace of liberalization and to what extent;
- (c) to verify whether it is necessary to maintain the measure or appropriate to withdraw it.

The review procedure shall be conducted in accordance with this Decree.

Title VII

Provisional Measures

Article 35

If the applicant invokes and demonstrates by the data set out in the application the existence of critical circumstances in which any type of delay would cause damage which would be difficult to repair and which require an immediate measure, and when it has been determined on a preliminary basis that there is sufficient evidence that increases have caused or threaten to cause serious injury, the Undersecretariat shall submit the technical report referred to in Article 10 of this Decree, recommending to the Secretary of

State of Industry, Trade and Mining that it is appropriate to initiate an investigation and at the same time to adopt a provisional safeguard measure.

In such circumstances, the Commission shall provide the Undersecretariat with the report mentioned in Article 10 of this Decree at least ten (10) days in advance of the period stipulated in that Article, a period which may not be extended, and the report shall contain the information available up to that point, so that the Undersecretariat may take it into account in making its recommendation.

Provisional safeguard measures shall take the form of an increase in import duties over the existing level (whether it is zero (0) or higher) if it is intended to prevent or remedy the serious injury.

The duration of such measures may not be more than two hundred (200) days.

Article 36

The Secretary of State of Industry, Trade and Mining shall, after evaluating the report by the Undersecretariat, decide whether such a measure is appropriate and also give his opinion on the initiation of the investigation; these findings shall be submitted to the Minister of the Economy and Public Works and Services within fifteen (15) days from receipt of the report.

The Minister of the Economy and Public Works and Services shall, on receipt of the findings of the Secretary of State of Industry, Trade and Mining, decide on the initiation and the adoption of provisional measures within a period of fifteen (15) days.

Article 37

If, in connection with the preliminary determination provided for in this Title, the Undersecretariat finds that there is no increase in imports in absolute and relative terms or that there is no evidence of injury or, where appropriate, that

the proposed adjustment plan is not considered viable, or determines that there is no causal link or any reason of timeliness, merits or desirability to warrant adoption of the measure, it shall submit its findings to the Secretary of State of Industry, Trade and Mining for his consideration.

Article 38

The decision to apply provisional measures shall be published in the Official Journal, specifying:

- (a) The product investigated;
- (b) factors relating to the determination of the existence of injury;
- (c) the causal link between the increased imports and the injury or presumed injury or threat of injury;
- (d) the new tariff level increasing the current import duty.

When the preliminary determination is negative, the decision must set out the issues of fact and law on which the Minister of the Economy and Public Works and Services has based his findings.

Article 39

Publication in the Official Bulletin shall be sufficient notification of the measure adopted.

Notwithstanding the foregoing, the decision on positive or negative provisional measures shall be communicated to all the parties participating in the investigation.

Article 40

When the Minister of the Economy and Public Works and Services decides to apply provisional measures, he shall notify the Committee on Safeguards before publication of the measure in the Official Journal.

All the pertinent information shall also be transmitted and shall include the causal link between the injury or presumed injury and the increased imports, a precise description of the product involved and the proposed measure, the date of introduction of the measure and the expected duration.

Article 41

For the purposes of control and monitoring of the measure, the National Customs Administration, a body of the Secretariat of Finance of the Ministry of the Economy, Public Works and Services, shall report monthly to the Undersecretariat the data on volumes and values of imports subject to the measure, with a breakdown by origin and the amount of duties levied.

The Undersecretariat shall be responsible for supervising proper implementation of the measure adopted.

Article 42

When provisional measures are no longer effective because the conclusion has been reached that there is no injury or threat of injury or, where appropriate, no reason of timeliness, merit or desirability of continuing with the investigation, customs duties levied in applying the measure shall automatically be refunded as promptly as possible.

Title VIII

Final Provisions

Article 43

When the information requested by the Undersecretariat or the Commission is not supplied within the specified periods or in accordance with this Decree or the investigation is significantly impeded, the findings may be reached on a basis of the information available. If the Undersecretariat or the Commission finds that an interested party or a third country has supplied false or misleading information, it shall not take it into account and may use the data available.

Article 44

This Decree on the application of safeguard measures in the context of the Agreement on Safeguards does not preclude the possibility of applying safeguard measures under the Agreement on Agriculture and the Agreement on Textiles and Clothing resulting from the GATT Uruguay Round -adopted by Law No. 24,425 - and also safeguard measures covered by other bilateral or multilateral agreements in force.

Article 45

This Decree shall enter into force on the day following publication in the Official Journal.

Article 46

For communication, publication and transmittal to the Directorate-General of the Official Registry. MENEM -- Jorge A. Rodríguez -- Roque B. Fernández -- Guido Di Tella.

ANNEX I

Requirements for Applications to Initiate Investigations into Safeguard Measures

(a) Name and address of applicant firms:

- (i) business name;
- (ii) importer/exporter No.
- (iii) place of central management;
- (iv) address;
- (v) city;
- (vi) province;
- (vii) postal code;
- (viii) telephones: fax:
- (ix) information chief;
- (x) post: telephone:
- (xi) employers federations to which the firm belongs:

(b) Characteristics of the product:

- (i) description;
- (ii) tariff heading;
- (iii) present import tariff;
- (iv) if included in a preferential agreement, state which one, the margin(s) of preference granted and residual tariff(s);
- (v) origin(s) of the product covered by the application;
- (vi) consigned from:
- (vii) status of the product in relation to the one produced by the applicant firm (delete the inappropriate term):
identical like
- (viii) use of the product:

1. Short description of the manufacturing process.

(c) Percentage of domestic production of the like or directly competitive product.

(d) Representativeness of the applicant firm(s) in domestic production of the like or directly competitive product.

(e) Import data: information must be supplied for the last five (5) full years to substantiate the significant increase in absolute or relative terms of the product being imported.

(f) Quantitative data on the kind and degree of alleged injury:

(i) With regard to serious injury:

1. significant idleness of production plant of the domestic industry, including data on plant closures or under-utilization of production capacity,

2. significant underemployment or inadequate employment in the domestic industry,

3. changes in price, production and productivity levels.

(ii) With regard to threat of serious injury:

1. decline in sales or in market share,

2. trend in decline in production, profitability, wages, productivity and employment,

3. a description of the situation stemming from the inability of domestic producers to generate sufficient capital to finance modernization of domestic plant and equipment or inability to maintain existing levels of research and development expenditures,

4. a description of the causes showing that imports are being diverted to the Argentine market owing to restrictions in third-country markets.

(g) Cause of serious injury:

(i) an explanation and description of the causes deemed to produce serious injury or threat of serious injury and the reasons therefor.

(h)Statement of the efforts the domestic industry is ready to make to increase competitiveness or to adapt to the new conditions of competition.

(i)Plan to facilitate adjustment of the domestic industry, so as to compete successfully with the measures, on completion of the period for which safeguard measures have been imposed.

(j) Critical circumstances:

(i)when the applicant alleges the existence of critical circumstances, he must attach, as well as comply with the remaining requirements,

1.a statement of the reasons for such a critical situation, together with relevant evidence demonstrating that the increased imports of the product under investigation are the cause of the serious injury or threat of serious injury and that delay in taking measures would cause damage to the domestic industry that it would be difficult to remedy,

2.the degree or extent to which the application of a provisional safeguard measure would help to improve the situation of the industry.