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Committee on Safeguards

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

PANAMA

The following communication, dated 26 March 1998, has been received from the Permanent Mission of Panama.

In accordance with the established procedures, I am forwarding herewith the text of the Panamanian legislation on safeguard measures.

It should be noted that the Panamanian legislation on safeguard measures is incorporated in Law 29 of 1 February 1996 enacting rules to protect competition and adopting other measures.

In that Law safeguard measures are dealt with under the following titles:

Title IV: "Safeguard Measures" (Article 91 ff.);

Title VI: "Provisions Common to the Preceding Titles"(Article 115 ff.);

Title VII: "Administrative Procedure" (Article 118 ff.).

LAW NO. 29

1 February 1996

Enacting Rules to Protect Competition and Adopting Other Measures

THE LEGISLATIVE ASSEMBLY

DECREES:

Title IV

Safeguard Measures

Chapter I

Object

Article 91. Object. The provisions of this Title are intended to provide domestic products with objective and temporary protection against massive imports of identical, like or directly competitive products, as a result of unforeseen developments or the effect of international obligations incurred or unilaterally agreed measures, including tariff liberalization, which cause or threaten to cause serious prejudice to the domestic industry or production.

Chapter II

Serious Prejudice or Injury

Article 92. Definitions. Serious injury or prejudice means a significant overall impairment in the position of the domestic industry or production.

Threat of serious injury or prejudice means that a major impairment in the position of the domestic industry or production is clearly imminent.

A directly competitive product is one which, while not being identical or similar to that with which it is compared, is substantially equivalent for commercial purposes in that it is intended for the same use as and is interchangeable with the latter.

Domestic industry or production means the producers as a whole of identical, similar or directly competitive goods or those whose collective output of identical, similar or directly competitive goods constitutes a significant majority of the domestic production of such goods intended for internal consumption.

Article 93. Determination of serious prejudice or injury. In determining the existence of serious prejudice or injury account shall be taken of the factors of an objective nature having a bearing on the domestic industry or production affected. These factors are as follows:

- 1.The inability of a reasonable number of enterprises to operate at a reasonable level of profit;
- 2.significant unemployment in the domestic industry or branch of production;
- 3.the rate and amount of the increase in imports of the products in question, in absolute and relative terms;
- 4.the share of the domestic market taken by increased imports;
- 5.any substantial change in the level of sales, production, productivity, capacity utilization, profits or losses, and employment.

Article 94. Determination of a threat of serious injury or prejudice. Any determination of a threat of serious injury or prejudice shall be based on facts and not merely on allegation, conjecture or remote possibility and account shall be taken of the following factors of an objective nature:

- 1.Reductions in sales or market share;
- 2.an increase in inventories;
- 3.a decline in production, profits, wages or employment;
- 4.the inability to generate the capacity necessary to modernize capital equipment or maintain levels of expenditure on research and development.

Article 95. Causal link. There shall be a causal link if it can be objectively demonstrated that the serious injury or prejudice or the threat of serious injury or prejudice is a direct and immediate consequence of increased imports of the product in question.

If other factors simultaneously prejudice the domestic industry or production, the prejudice caused by those factors shall not be attributed to the imports subject to investigation.

Chapter III

Safeguard Measures

Article 96. Definition. Safeguard measures are instruments of temporary protection applied for such period of time as may be strictly necessary to prevent or remedy the serious prejudice or injury to the domestic industry or production and to facilitate adjustment.

Safeguard measures shall be applied to the product imported irrespective of the country from which it is imported.

Article 97. Form. Safeguard measures may take the following forms:

1. Tariff increases;
2. imposition of tariff quotas;
3. imposition of quantitative restrictions;
4. any other measure compatible with Panama's international obligations that counteracts the material prejudice or injury or threat of material prejudice or injury caused by international market access obligations or by unilateral measures.

Article 98. Duration. Safeguard measures shall have a maximum duration of four (4) years. This may be extended for an equal period if, at the request of a party, it is determined that the measure continues to be necessary to prevent or remedy the serious prejudice or injury.

Article 99. Liberalization. When the duration of a safeguard measure exceeds one year, it shall be progressively liberalized for periods of one year, to facilitate adjustment.

If a safeguard measure is extended, it may not be more restrictive than it was at the end of the initial period and must continue to be progressively liberalized.

Likewise, a safeguard measure shall be liberalized if the domestic industry or production does not comply with the plan to overcome the circumstances alleged to be the cause of the injury or the restructuring plan laid down in the final decision.

Article 100. Exception. Safeguard measures shall not be applied against a product originating in a developing country Member of the World Trade Organization as long as imports of the product concerned do not exceed

three per cent (3%) of total imports, and provided that developing country Members of the Organization with less than three per cent (3%) import share collectively account for not more than nine per cent (9%) of total imports of the product concerned. This provision shall enter into force from the time of Panama's accession to the World Trade Organization.

Title VI

Provisions Common to the Preceding Titles

Single Chapter

Common Provisions

Article 115. Conversion of the Price Regulation Office and the Directorate for Consumer Protection The budget items allocated to the Price Regulation Office and the Directorate for Consumer Protection shall be transferred to the Commission. Such civil servants employed by the Price Regulation Office and the Directorate for Consumer Protection as are required for its operation shall be relocated in the Commission; the remaining staff members employed by those two entities shall be transferred to other government departments where they shall receive the same remuneration.

Article 116. Statutory limitation. Action to initiate the procedure shall be subject to a limitation of three (3) years, from the moment at which the fault took place in the case of practices which restrict competition, or from the moment at which the fault is effectively known in the case of unfair trading practices.

Similarly, there is a limitation of one year for such action with respect to consumer protection. This period of limitation shall be interrupted upon submission and notification of the request in accordance with the general provisions of the Judicial Code.

Article 117. Dissemination. The Commission shall disseminate this Law throughout the national territory and shall organize campaigns to inform the public of the rights and obligations of consumers and economic agents and how to make use thereof. Similarly, the Commission shall coordinate with business and consumer organizations the preparation of recommendations for the drawing up of contract documents in the areas governed by this Law.

In connection with the above provision, the annual budget of the Commission shall include, in addition to the allocations covering the cost of its campaigns to inform consumers, a total amount which shall in no case exceed 10 per cent (10%) of its dissemination and advertising budget in the form of a transfer to duly constituted consumer associations recognized by the relevant entities.

Title VII

Administrative Procedure

Chapter I

Verification of Concentrations

Article 118. Verification procedure. In verifying concentrations, the Commission shall in all cases comply with the following procedure:

- 1.The economic agent concerned shall submit the corresponding notification in writing together with a copy of the judicial act at issue, the names or business addresses of the parties involved, their financial statements from the previous financial year, their share in the relevant market and other data required for the examination of the transaction.

- 2.The Commission may request additional data or documentation within a period of twenty (20) calendar days following receipt of the notification.

3.The Commission shall have a period of up to sixty (60) calendar days following the date of receipt of the notification or, where appropriate, the date of receipt of the additional data or documentation, to issue a decision. If no decision has been issued within that period, the concentration shall be understood to have been approved.

4.The decision of the Commission shall be duly reasoned and substantiated in law.

5.A favourable decision by the Commission shall have no bearing on other monopolistic practices prohibited by law.

6.The Commission may reject a request for a verification that is obviously unjustified or when it has previously issued an opinion on such verification.

Chapter II

Conciliation Process

Article 119. Complaints. The consumer may submit a complaint against a supplier to the Commission, which shall endeavour to reconcile the positions of the parties. Complaints shall be filed in writing.

This Article shall be regulated by the executive body.

Article 120. Summons. Upon receipt of the complaint, a summons shall be served on the supplier indicating the date, time and place, and the reason for the proceedings, which shall be notified no less than two (2) days in advance.

Failure to respond to a summons shall not constitute disobedience or justify a presumption of guilt.

Article 121. Conciliation. The process shall be oral and informal. The conciliator shall review the case, inform the parties of the relevant provisions of the law and seek to reach an amicable settlement between them.

The conciliator shall keep a record of the proceedings, and if no settlement is reached, shall so indicate in case the consumer wishes to seek judicial remedy.

The mayors of the provincial capitals shall be appointed to conduct the conciliation process initiated on written complaint by consumers in accordance with Title VII of this Law.

Chapter III

Safeguard Measures Proceedings

Section 1

Proceeding

Article 122. Initiation of proceeding. The investigation to determine safeguard measures shall be initiated on application. The Substantiating Commissioner shall carry out the entire proceeding and give a ruling in the form of a reasoned decision, in accordance with the provisions of Article 137 of this Law.

Article 123. Entitlement. The domestic industry or production injured by the imports subject to investigation shall be entitled to initiate a proceeding. Producers' associations which consider themselves injured by the imports subject to investigation shall also be entitled to initiate a proceeding provided they account, individually or collectively, for not less than twenty-five per cent (25%) of domestic production of the goods intended for domestic consumption.

Article 124. Application for the initiation of a proceeding. The proceeding shall be initiated by the submission of an application, prepared by a competent attorney, clearly indicating the factual and legal grounds or basis for the request and accompanied by sufficient evidence of imports that are causing or threatening to cause serious injury to the domestic industry or production and of a causal link.

The application shall contain the following minimum information:

- 1.Particulars of the applicant;
- 2.the percentage of domestic production of goods intended for domestic consumption represented by the goods which the applicant produces for the domestic market;
- 3.detailed description and tariff heading of the imported product, specifying its quality as compared with domestic production and other characteristics;
- 4.volume and prices of the imports subject to investigation and their impact on the domestic production affected;
- 5.the names and addresses of the importers and, if known, of the exporters;
- 6.the country of origin and of export;
- 7.determination of serious injury or prejudice or threat of serious injury or prejudice, using the parameters indicated in Title IV, Chapter II of this Law;
- 8.a restructuring plan or a plan to overcome the circumstances alleged to be the cause of the serious injury or prejudice or threat of serious injury or prejudice, provided that these circumstances are variables which the domestic industry or production concerned is able to control.

Article 125. Procedure. Having received the application, the Substantiating Commissioner shall determine whether it meets the requirements of this Law and, if so, shall initiate an investigation.

If the application does not meet the requirements of this Law or if, even though it meets those requirements, the information submitted is not clear, the applicant shall be requested to amend the application or furnish the relevant documents within five (5) working days of notification. If this period elapses without the applicant complying with the request, the application shall be rejected and placed on file, until it is amended.

The Commission may reject outright applications which clearly do not comply with the causality provisions or are obviously groundless.

Article 126. Public notice of the initiation of an investigation. Once the application has been accepted and an investigation initiated, a summary of the application shall be published in a newspaper with a recognized national circulation.

Article 127. Communication. The application submitted shall be communicated to the interested parties within a period of forty (40) working days starting seven (7) calendar days after its date of dispatch. Likewise, a copy of the application shall be communicated to the authorities specified in the international agreements to which Panama is party.

The application shall be accompanied by a questionnaire detailing the points to which reference should be made in the reply.

If no reply is received within the time allowed, the competent authority shall proceed with the investigation ex officio.

Section 2

Evidence

Article 128. Evidence. The applicant shall adduce or supply evidence that imports have increased and that such increase is causing or threatens to cause serious prejudice or injury to domestic production or industry in accordance with this Law.

The Commission shall use sound criticism as a system for evaluating the evidence.

Article 129. Examination of the evidence. The Commission shall require and examine only such evidence as is necessary and relevant in determining the truth of the facts under investigation in accordance with the information supplied by the parties and the provisions of this Law, within a time-limit not exceeding 30 working days following the response to the communication.

In order to proceed better, the Commission may at any time request any kind of information or technical parameters from any of the government agencies, which shall be required to supply them.

It may also request the interested parties to supply questionnaires, expert reports, opinions or technical criteria as it deems appropriate, and order any type of measure to help to ascertain the alleged facts.

Article 130. Evidence abroad. The Commission may, with a view to verifying the information received or obtaining further details, conduct investigations and obtain evidence in the territory of the exporting country, provided it has so notified the authorities of the exporting country and encountered no objection. The investigation and examination of evidence may also take place in the facilities of the exporting enterprise subject to prior approval.

Article 131. Access to information. When the authorities of the exporting country or the interested parties deny access to the necessary information, refuse to provide such information within a reasonable time-period or

seriously impede the investigation, preliminary or definitive conclusions may be reached on the basis of the facts available.

Section 3

Provisional Safeguard Measures

Article 132. Requirements. Through a reasoned decision, the Commission may recommend the Cabinet Council or such entity as the Law specifies to adopt provisional measures in order to prevent, during the period of the investigation, serious and imminent prejudice to domestic industry or production that is difficult to repair, provided the increase in imports has been found to have caused or threatened to cause serious prejudice or injury.

The reasoned decision shall set forth the arguments of the applicant, the evidence furnished by the applicant and the arguments in favour of imposing a provisional measure.

Article 133. Application. The provisional safeguard measure shall consist of temporary tariff increases. Where it is found that the increase in imports has not caused or threatened to cause serious prejudice or injury to domestic industry or production, the temporary tariff increases shall be paid back to the importers.

The duration of the provisional safeguard measures shall not exceed two hundred (200) days.

Article 134. Imposition. The Commission shall transmit to the Cabinet Council, through the Ministry of Trade and Industry, or to such entity as the law specifies, a copy of the decision recommending the provisional safeguard measures so that it may impose such measures in accordance with the authority granted under Article 195, paragraph 7 of the Constitution or in conformity with the law.

Article 135. Publication. A summary of the provisional safeguard measure that has been adopted shall be published in a newspaper with a recognized national circulation.

Section 4

Hearing and Final Resolution

Article 136. Hearing. Having completed the examination of the evidence and before issuing a final decision, the Substantiating Commissioner shall summon all of the interested parties to a hearing for the purpose of informing them of, and hearing their views on, the essential facts under consideration and which are to serve as a basis for the decision whether or not to apply safeguard measures. The parties shall be given a period of three working days to submit arguments in defence of their interests.

Article 137. Final Resolution. Upon receiving the arguments, the Substantiating Commissioner shall have 10 working days in which to issue a substantiated decision, which shall include:

1. An analysis showing that:

(a) Imports of the specific product in question have increased massively owing to an unforeseen change of circumstances and as a result of international obligations entered into or measures agreed unilaterally, including tariff reductions, in quantities such as to cause or threaten to cause serious prejudice or injury, in absolute or relative terms, to the domestic industry or production of identical, like or directly competitive goods;

(b) massive imports resulting from the above-mentioned circumstances cause or threaten to cause serious prejudice or injury to the domestic industry or production of identical, like or directly competitive goods.

2. Where appropriate, a recommendation calling for the application of:

(a)A plan to overcome the circumstances which, according to the application for initiation of the process, are the cause of the serious injury or prejudice to domestic industry or production, provided that these circumstances are variables which the domestic industry or production concerned is able to control. The Commission shall review the application of the plan every six (6) months until the period of application of the safeguard measures, which shall not exceed four years and is not subject to renewal, expires; or

(b)a plan to restructure the affected domestic industry or production, submitted with the application for the initiation of the proceedings, provided that the circumstances alleged to be the cause of the serious injury or prejudice to the affected domestic industry or production are variables which they are unable to control. The Commission shall review the restructuring twice within the period of application of the safeguard measure, which shall not exceed four (4) years. The four-year period may be renewed on the recommendation of the Commission following the second review of the restructuring plan, provided that the circumstances which the domestic industry or production are unable to control have not varied;

(c)failure by the affected domestic industry or production to implement the plans described in paragraphs (a) and (b) above shall lead to the immediate suspension of the safeguard measures;

3.A recommendation by the Cabinet Council or by such entity as the law may specify to impose safeguard measures on the imports of the specific product.

Otherwise, the Substantiating Commissioner shall disregard the application and terminate the proceedings.

Article 138. Appeal and exhaustion of government remedies. The remedy of appeal is the only remedy against the final resolution, and it must be

lodged and substantiated before the full Commission within ten (10) working days following notification.

The interested parties shall be informed of the appeal within five (5) working days so that they may present their arguments.

The full Commission shall have fifteen (15) working days in which to settle the appeal, after which government remedies will have been exhausted, opening the way to the administrative challenge system.

The appeal shall have a suspensive effect.

Article 139. Imposition of safeguard measures. A copy of the Final Resolution shall be transmitted through the Ministry of Trade and Industry to the Cabinet Council or to such entity as the law specifies so that safeguard measures may be imposed in accordance with the authority granted under Article 195, paragraph 7 of the Constitution or in conformity with the law.

Article 140. Publication. The operative part of the Final Resolution, once it has been cleared at governmental level, it shall be published in the Official Journal. Any subsequently agreed amendment thereto shall also be published in a newspaper with recognized national circulation.