CASE STUDY

Egyptian Safeguard Investigation on Imports of Milk Powder: An Analysis of the Arguments

Tarek Hatem

Elham Metwally

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The Issue

In April 2001, the Anti-Dumping/Subsidy Department, in the Foreign Trade Sector of the Egyptian Ministry of Economy and Foreign Trade faced a decision on whether to impose a tariff on imports of milk powder as a safeguard measure designed to give the Egyptian milk farmers a breathing space to adjust to greater international competition. The Department also needed to decide how much of a tariff to impose if it decided that the imposition of a safeguard measure was warranted by Eyptian trade laws and international trade rules.

In early August 2000, milk producers in Egypt had requested the Ministry of Economy and Foreign Trade to impose restrictions on imports of powdered milk. In response to the petition, the government decided in September 2000 to impose a provisional duty of 45% and to open a formal investigation into the possible imposition of a safeguard measure. The government based its decision on a large increase in dry milk imports in 1999 and 2000. Under Egyptian trade legislation and the rules of the World Trade Organization (WTO), the government can impose temporary import restrictions when a significant increase in imports threatens to create serious injury to domestic producers.

This case study covers the period between September 2000 when the International Trade Policies Department imposed the provisional safeguard measure and April 2001, when the Department had to make a decision on whether to impose import restraints on a longer term basis and whether such restraints should be lower or higher than the provisional duty of 45%.
The case analyzes the facts presented by supporters and opponents of the measure. The local milk industry argued that increased imports had resulted in a major reduction in the domestic market price of milk products and their revenues, resulting in losses for th industry in 1999 and the first half of 2000. However, there were other stakeholders involved. The manufactures of processed dairy products, for example, complained that government action to reduce imports of milk powder would increase their production cost and the prices paid by consumers.

Background Facts : The Product

Locally Produced Milk

Fresh local milk is produced by cows, buffaloes, goats or sheep milked either manually or mechanically. It contains water, fat, protein, sugar, mineral salts and vitamins. Water constitutes 85% of the milk while fat is 3-4% of cow's milk and 5.5% of buffaloes' milk. Milk production takes place in both small farms and large commercial farms. In addition, buffaloes' milk may be produced by free roaming cattle outside the borders of big cities.

In small farms the number of cattle is less than 50 and fresh milk produced is consumed internally. Some of the milk is drunk fresh while the rest is made into butter and cheese. Surpluses of milk are delivered by middlemen to milk wholesalers who, in turn, deliver it to dairy processing manufacturers. Large commercial farms, however, keep herds of cows and buffaloes and deliver most of their production of milk to dairy processing and food stuffs manufacturers. Fresh milk is used in manufacturing of yogurt, Rayeb, labneh, cheese, ice-creams, biscuits, chocolates, pasta and baked foods.

Imported Milk Powder

Milk Powder is created by dehydrating fresh full cream, half skimmed or fully skimmed milk through industrial processes. When powdered milk is restored to a liquid form, it continues to maintain its distinguished smell and taste and is fully dissolved in water.

There are two kinds of imported milk: full cream instant milk powder (3% fat) which is delivered in small packages, and consequently, can be used by consumers directly and full milk powder that can be used for industrial purposes. Powdered milk can be reconstituted and then pasteurized (O.H.T) before it can be used for drinking purposes. It can be used to produce products such as: yogurt (100%), feta cheese (20%), children's food stuffs (10%), chocolate (20%), etc. through fermentation. It can also be used in the production of ice-creams, chocolate, biscuits and processed meat.

Powdered milk is manufactured by being exposed to heat during dehydration which can be through Spry-Drying (dehydration through warm air) or through Drying-Drum (dehydration by passing warm air through cylindrical surfaces). The quality of milk produced depends on the way and duration of the dehydration process. Milk that is heated at low temperatures to kill any dangerous bacteria maintains its nutritional contents of vitamins and proteins which makes its price higher than all others. On the other hand, milk that is handled at high temperature is bound to lose its nutritional value which makes its price the lowest. In between is milk treated with medium heat temperatures.

Egypt imports milk powder from several countries, including the US, France, New Zealand, Denmark, Poland, Australia, Sweden, Germany, Holland, the UK, Belgium, Ireland, Spain, Finland, the Czech Republic, China, Togo, Turkey and Bulgaria. The US has the highest market share of total imports of 26%, and is followed by France 11%, and New Zealand 9%. The major companies exporting milk powder to Egypt are Bailie Foods Ltd, Nestle World Trade Corporation and the New Zealand Dairy Board.

Background Facts :The Domestic Industry

The domestic dairy industry is made up of the dairy farmers, who are represented by the Egyptian Association of Milk Producers and the industrial producers of dairy products, who are represented by the Milk Industry Development Association.

Egyptian Association of Milk Producers

The Egyptian Association of Milk Producers represents all the owners of dairy herds. 90% of all the milk producing animals are owned by small farmers who have an average of three or four animals per farm. 65% of all dairy products sold to consumers is produced and processed by dairy farmers. Producing milk products is a very labor intensive business, and the number of dairy farmers is quite large, which translates into considerable lobbying power.

Milk Industry Development Association

Industrial producers of dairy products are represented by the Milk Industry Development Association. The main companies are Misr Dairy, Nestle (whose main dairy products are yoghurt, milk powder, cream, and canned concentrated milk), Domty (which is the largest producer of mozzarella in the Middle East, New Zealand Milk Products (Egypt) (the major importer of bulk butter whose chief domestically produced dairy product is processed cheese), Juhayna, Milkiland, and El Misreen. Industrial production of dairy products is capital intensive and accounts for 35% of Egypt's dairy production.

Background Facts : Domestic Production and Trade

Imports

In Imports of milk powder increased by 10% in 1997, 21% in 1998, and 89% in 1999. The domestic production of fresh milk also increased during this period, though not at the same rate as imports. Compared to 1996, the percentage increase was 10%, 17% and 24% in 1997,1998 and 1999 respectively.

Revenues and Prices

Even though the volume of fresh milk sold by domestic producers continued to increase from 1996 through the first half of 2000, local milk revenues declined during the same period as the prices received by farmers fell faster than the increase in sales. Domestic sales of fresh milk in terms of volume rose by 10% in 1997, 17% in 1998 and 24% in 1999,.Prices fell by 15% in 1997 and 38% in 1999, and sales revenues fell by 18% from 1996 to 1998, and by 23% from 1996 to 1999

Market Share

The market share of domestically produced milk fell in 1999 and the first half of 2000. Market share of local sales of milk was 93% throughout the years 1996 to 1998. It then decreased in 1999 and 2000 to 90%. The market share lost by domestic producers of fresh milk was at the same time gained by imports of milk powder .

Profitability

The profits of domestic milk farmers before taxes turned to losses in during the period from 1996 to the first half of 2000, which coincided with the substantial increase in imports of milk powder. Producers started incurring net losses in 1997, and the losses increased in subsequent years. They reached 143.7 L.E/.

Return on Investment

ROI went down by 51% in 1997, and by 178% in 1999. **??????**

Background Facts : Legal Requirements for Imposition of Safeguard Measures

Egyptian Law on Safeguard Measure

Under Egyptian trade legislation, (Article 79 of Law 161/1998) the government can impose temporary import restrictions when a significant increase in imports threatens to create serious injury to domestic producers. Article 80 defines "serious injury" as a significant overall impairment in the position of a domestic industry. Article 81 requires a causal link between the increased imports and serious injury. Article 82 permits the imposition of a provisional safeguard measure if the investigating authority finds a clear evidence that increased imports have caused or are threatening to cause serious injury that cannot be easily remedied if the measure is delayed. Article 83 provides that the provisional safeguard measure should take the form of a tariff for a duration not to exceed 200 days, which has to be refunded if the full investigation does not conform that the increased imports caused the serious injury to the industry. See Appendix for details.

WTO Rules on Safeguard Measures

Since Egypt joined the World Trade Organization (WTO) in 1995, any measures Egypt takes also has to be consistent with the requirements of Article 19 of the GATT, the so-called safeguard measure. Under Article 19, a member of the WTO, may apply a safeguard measure to a product only if it is determined that such a product is being imported into its territory in increased quantities, whether absolute or relative to domestic production, such that it causes or threatens to cause serious injury to the domestic industry which produces similar or directly competitive products. Safeguard measures have to be imposed without taking account of its origin. See Appendix for details.

Serious Injury

Serious injury is an overall impairment of the position of the domestic industry. In this respect, "Domestic Industry" means the domestic producers of like or directly competitive products, whose total output constitute a large proportion of the total domestic production of those products. The investigating authority has to determine the existence of a threat of serious injury based on facts presented, not on mere possibilities.

Causal Relationship Between the Increased Imports and the Injury to Domestic Industries

In determining serious injury to the domestic industry, the investigating authority has to evaluate all factors relevant to that particular industry. Such factors include the rate and increase in imports of the product concerned in both absolute and relative terms, the share of the domestic market taken by increased imports and fluctuations in sales levels production, capacity utilization, profitability levels, and employment. The authority then must examine the causal link between increased imports of the product concerned and serious injury.

The First Phase of the Milk Powder Battle

The milk battle started in early August 2000 when the Egyptian Association for Milk Producers (AMPA) lodged a complaint to the Anti-Dumping/Subsidy and Safeguards Department of the Foreign Trade Sector in the Ministry of Economy and Foreign Trade. The AMPA asserted that an increase in imports of powdered milk was causing serious injury to national producers of fresh milk.

The AMPA Request for Protection

The AMPA presented the following facts to in support of their assertion that a sharp increase in imports had seriously injured local producers of fresh milk :

- Local milk prices fell by 38% during 1999 and the first half of 2000, from 120 P.T./KG to 80 P.T./Kg.
- Prices of milk delivered by small farmers fell from 80 P.T./Kg to 45 P.T./Kg.
- Egyptian dairy manufacturers refused to accept delivery of locally produced milk, since they preferred importing powdered milk at a lower price.
- Great losses were incurred by large farms, since milk prices fell relative to production and growth of live stock.
- Owners of large farms were unable to pay their bank debts. These farms, as a result, went bankrupt and were forced to lay off their employees.

The Investigation of Serious Injury

In order to reach a decision on the imposition of provisional safeguard measures and the initiation of a full-fledged investigation leading to the imposition of a longer term measure, the Anti-Dumping/Subsidy and Safeguards Department had to make determinations concerning the increase in imports, injury to the industry, whether fresh milk and milk powder were directly competitive products and whether there was a causal link between the increase in imports and the serious injury.

Increasing Imports

Ministry officials determined that the 89% increase in imports of milk powder in 1999 constituted an unjustifiable increase in imports, as stipulated by Article 79 of Law 161/1998.

Serious Injury

Ministry officials determined that the 38% decline in domestic prices between 1996 and 1999, and the consequent 23% decline in sales revenues and losses reaching 143.7 Egyptian Pounds per ton in 1999.

Competition

Ministry officials determined that imported milk powder and locally produced fresh milk are competitive products, since they serve the same needs and purposes.

Causal Link

Ministry officials determined that a causal link existed between the increased imports and the injury to the industry by virtue of the fact that fresh milk and powdered milk were directly competitive products, and the fall in prices and revenues of domestic milk producers coincided with the increase in imports of milk powder.

The Decision on the Provisional Application of Safeguard Measures

Having determined on the basis of its investigation that the domestic milk industry had experienced serious injury as a result of an unjustifiable increase in imports, the Anti-Dumping/Subsidy and Safeguards Department on September 25, 2000 announced the imposition of a provisional 45% tariff on imported milk powder starting in September 26, 2000, for a period of 200 days (Decree 577, 2000, and the initiation of a formal safeguard investigation. These provisional tariffs were to be refunded to importers if the subsequent investigation did not determine that increased imports caused or threatened to cause serious injury to the domestic industry.

The Ministry published the action in the Official Egyptian Gazette and sent faxes and mail notices to different stakeholders, inviting them to participate in the investigation. Concerned parties comprised the domestic industry, the Egyptian milk producers, importers and exporters, the governments of exporting countries and the WTO. The Anti-Dumping/Subsidy and Safeguards Office also issued a report explaining its action

The Second Phase of the Milk Battle

Verification of the Facts

As part of the full investigation, Ministry officials conducted on-the-spot verification visits inside and outside the country to get the data required for the investigation. For example, Ms Dorreya Kamel, a supervisor in the Anti-Dumping/Subsidy and Safeguards Department verified data presented by the Egyptian Association of Milk Producers with the Ministry of Agriculture, the Customs Department, the Import/Export Control Authority and the Central Agency for Public Mobilization and Statistics (CAPMAS)."

Proposed Actions by Milk Producers to Adjust to Greater International Competition

Under the international trade rules, a safeguard measure can normally be applied for only four years, a period which can be extended by another four years if the measure continues to be necessary despite the fact that the industry has made real efforts to adjust to the increased international competition. Article 7 of the WTO Safeguard Agreement also requires that the country imposing the measure progressively liberalize the measure at regular intervals during the period of application. These measures are designed to encourage the industry being protected to make a continuing effort to improve its competitiveness during the time that the safeguard measure is in effect.

A government that is considering a safeguard action therefore needs to consider whether the industry has developed an adequate program for making itself more competitive over the period the safeguard action is in effect. Therefore, the Anti-Dumping /Subsidy and Safeguard department requested the Egyptian Association for Milk Producers to submit details on its strategies and procedures for improving its productivity during the period in which final safeguard measures are applied. In response, the Association presented a plan under which the domestic cost of producing milk would be reduced by:

- Crossbreeding domestic herds with cows capable of a higher milk yield.
- Educating small farmers to use artificial impregnation methods to produce cows of higher milk yield.
- Educating small farmers to use modern equipment in order to increase production and reduce costs.
- Distributing medical publications issued by pharmaceutical companies in attempts to prevent or reduce disease.
- Educating cattle breeders to use fodder of high nutritional value in order to increase milk yields and at the same time reduce costs.
- Organizing training sessions for employees of dairy farms to introduce the latest feeding process as well as ensuring their medical health.

The Association also planned to take the following additional industry wide steps to increase revenues and to reduce costs. These were:

- Reinforcement of existing support systems
- Review of policies related to disease control.
- Development of a network for manufactured husbandry.
- Establishment of a better system for recording production of domestic milk.
- Establishment of an information base of experts in this field.
- Introduction of a cattle insurance system.
- Establishment of a market information network.
- Introduction of an improved feeding system:
- Introduction of new feeding systems adapted to the requirements of different production systems.
- Introduction of a program for tracking and improving inherited traits that prove to be of economic advantage.
- Enlargement of herds.
- Development of a system for the retail distribution of milk.
- Improved supervision and control of milk production:
- Improved systems for milking and cooling operations.
- Developing better tools for treating milk and facilitating its transportation.

Policy Objectives of the Government

The Egyptian government in recent years has pursued a policy in support of an expansion of trade and economic reforms consistent with an outward looking trade policy. The government was concerned, however, about the current capacity of domestic dairy farmers to compete with foreign products in their domestic market. Imposition of a safeguard measure could give the farmers the breathing space they need to become more competitive. As a member of the WTO, the government was committed to adhere to the rules of the organization, and any safeguard action had to be consistent with the WTO Safeguard Agreement.

Concerns of Milk Industry Development Association

The Milk Industry Development Association, representing industrial processors of dairy products, expressed their concern to the government that the 45% import duty on powdered milk, would have the following adverse effects:

- World wide prices of imported powdered milk increased from L.E.5,278 /Ton in February 2000 to L.E.10,000/Ton in March 2001 following the removal of European subsidies on exports, from 90 to 40 Euros/Kg of skimmed milk, as required by commitments WTO regulations. As a result, industrial producers of dairy products had to pay L.E.14,500/Ton after increased import duties and the increasing price of the dollar, all of which eventually increased their production costs by 5-25%. Locally processed dairy products also faced competition from imports of processed dairy product, which were not subject to the 45% tariff. Also, after the increase in the cost of powdered milk and the dollar's exchange rate, the prices of local fresh milk was lower than the price of milk reconstituted from imported milk powder.
- The imports of a variety of cheese would not have been reduced, from 30,000 tons in 1995 to only 1000 tons in 1999, had industrial producers encountered problems in importing powdered milk to cover the shortfalls in the supply of locally produced milk.
- Dina is the only domestic farm able to produce powdered milk with a maximum amount of 2700 tons/year.
- Increased import duties on milk is adversely affecting the ability of the Egyptian industrial dairy processing industry to export processed dairy products, especially cooked and white cheese, to Arab countries. For example, in 1999-2000 Gulf countries imported 15,000 tons of processed cheese and 5,000 tons of white cheese from Egypt.
- Dairy processing companies were unable to pay their bank debts. Some even started laying off their employees as they couldn't pay their salaries. This, in effect, impeded new investments.
- Dairy processing companies were forced to increase their prices by 25-50% for products for which powdered milk is an important component. This reduced per capita consumption levels of dairy products from 40.7 kg in 1992 to 36.6 kg in 2000. These levels are very low when compared to the minimum needs of individuals set by the World Health Organization which are 90kg/person/year.
- In Egypt, average milk production per animal is very low at only 440 liters/year. This low productivity is attributed to large seasonal fluctuations in feeding of life stock, with cows

getting fed poorly during summer but fed well during winter. Consequently, total production of milk in Egypt (which is 3.5 million tons) is not sufficient to satisfy recommended consumption levels during the 5 month summer season, and imports are therefore required to cover 40% of actual market needs.

- Increased import duties allows unlicensed factories of dairy products to emerge. It also permits products that are not in compliance with international quality standards and environmental responsibility to invade the dairy products market.
- The manufacturing facilities of the most modern industrial processors were designed to operate using powdered milk. Using fresh milk is not possible because of the following difficulties:
- Lack of machinery and product lines suitable for receiving, cooling and compressing raw milk. Adding these facilities , on the other hand, would require large investments, space and suitable vehicles equipped for raw milk transportation.
- Ice-cream, biscuit, chocolate and cake factories will face several technical, technological and health problems if they use raw milk in production. Specifically, the bacterial content of milk increases during summer because these factories use pasteurization rather than sterilization.

Exporting Countries

As required with global trade rules, the Egyptian government initiated consultations with exporting country governments, including the USA, France, New Zealand, Poland, Denmark, Australia, Sweden, Germany, Holland, the UK, Belgium, Ireland, Spain, Finland, Czech Republic, China, Togo, Turkey and Bulgaria. The parties concerned were given 37 days from the date of receiving notification to provide their input.

However, because of the mutual foreign trade relationship between Egypt and these countries, especially the US which is the market share leader of powdered milk in Egypt, these countries were eventually convinced of Egypt's right to impose safeguard measures in order to prevent its domestic production from serious injury. This acknowledgment was made with the stipulation that such action would only be until Egypt restructures its local production of milk.

Political Considerations

Industrial production of dairy products is capital intensive. Therefore, though the value added of these factories is greater, their lobbying power is less than that of local milk producers. The number of dairy farmers is greater than 1 million, and they are an important constituency throughout the country, and this gives them considerable political influence.

The "Milk Truce" Between Pro-Camp and Against-Camp

In its efforts to arrive at a negotiated solution, the government engineered a "milk truce" between Egyptian dairy producers and manufacturers of dairy products. The key element of the plan was the establishment of a milk board, with representatives from both parties. The objectives of the milk board would be to establish an agreed milk price that would take into account market changes, prices of imported milk and variations in the dollar's exchange rate. The government proposed that the price should initially be fixed at 103 PT/kg in winter and 105PT/kg in summer. The plan would also include development of a program to support livestock development.

In return for the adoption of this proposal, the Egyptian Association for Milk Producers was expected to withdraw the complaint lodged to the Anti-Dumping/Subsidy and Safeguard Department.

In the end, the proposal by the government to create a joint milk board in place of the import restraints fell apart because of the withdrawal of one of the companies.

Relief Requested by the Egyptian Association for Milk Producers

The Egyptian Association for Milk Producers requested a final safeguard measures on imported powdered milk in the form of a custom duty of 120%. The association requested the application of the duty during the first year and demanded the safeguard measure remain in effect for four years starting from the date of publishing the notice. After the four years, they asked for a new investigation or review of measures depending on their past effectiveness.

Making the Decision – A Simulation for Students

If you were responsible for making a decision in this case, what action would you take?

- Would you grant relief, and why?
- How much relief would you provide? Less or more than the provisional action? Why?
- What parallel domestic actions by the government would you recommend in order to facilitate adjustment?
- What actions would you require by the industry if you decide to grant import protection?

Explain the commercial, macro economic, political, legal and policy considerations that went into your decision.

- How seriously do you believe the industry was injured by imports, and why did you think it was important to remedy the injury through import protection or other government actions? How crucial is the industry to the Egyptian economy? What is the long term economic viability of the industry and will the recommended import protection help the industry to survive after the protection expires?
- How were your decisions influenced by the overall economic impact on the Egyptian economy, as against the impact on the milk industry?
- Do you believe such action would meet the requirements laid out in the Egyptian legislation and in the WTO provisions? Justify your recommendation on the basis of the legal requirement.
- How were your decision influenced by the relative political influence of the different stakeholders?

How would you present the decision to the public? Prepare a draft press release explaining your decision.

Epilogue

Final Recommendations and Decision

On April 12, 2001, after an investigation of 7 months and 20 days, the Anti-Dumping/Subsidy and Safeguards department decided upon final protection measures for three years applicable to all exporting countries without discrimination. The imposed tariff of CIF amount of imports of powdered milk was determined to be 15% in the first year, 7% in the second year and 3% in the third year.

The government reduced the tariff charged on powdered milk in such manner. However, this was mainly due to increases in worldwide prices of the product, devaluation of the Egyptian pound, changes in foreign exchange prices and an attempt at compromise between the interests of milk producers and dairy processing firms. In fact, the newly imposed duties protect local producers of milk and at the same time reduce production costs of manufacturers of dairy products.

Egyptian dairy producers filed a lawsuit against the Ministry of Foreign Affairs protesting against the reduction of the protection fee from the previously established 45% to the newly imposed, cascading levies. In addition, Egyptian dairy manufacturers also filed a law suit against the ministry which demanded refunds for the difference between the new tariff rates and the old tariff rates imposed. They argued that the 45% protection fee was enforced without enough investigation which in effect harmed their firms.

Eventually the Minister of Foreign Trade, Dr Youssef Botros Ghali, solved the problem of importers of powdered milk when he authorized the refund of the difference between the tariff rates. “Importers can present a written statement, through the General Union of Chambers of Commerce, requesting settlement of disputes with the Ministry of Foreign Trade provided that they attach to such request all documents which prove their payment of levied protection duties,” declared Mr. Khaled Abou Ismail, Head of the General Union of Chambers of Commerce.

APPENDIX

Egyptian Law on Safeguard Measures (Law 161/1998)

Article 79 Safeguard measures against the unjustifiable increases in imports

Safeguard measures against unjustifiable increases of imports are those applied against products (other than dumped or subsidized) imported into Egypt in such increased quantities, absolute or relative to domestic production, and such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Article 80 Determination of serious injury or threat

"Serious Injury" shall be understood to mean a significant overall impairment in the position of a domestic industry. "Threat of serious injury" shall be understood to mean serious injury that is clearly imminent and would cause impairment in the position of the domestic industry.

Article 81 Determination of serious injury or threat

The investigating authority shall determine the serious injury caused to the domestic industry on the basis of facts and the existence of a causal link between the increased imports of the product concerned and the serious injury or threat thereof. The investigating authority shall verify the following:

An increase in imports of the product under investigation either absolute or relative to production in Egypt.

The impact of increased imports on the situation of the domestic industry including sales, production, productivity, utilization of capacity, profits and losses, employment and market share.

Article 82

Provisional safeguard measures against unjustifiable increase of imports may be imposed if the investigating authority finds a clear evidence that increased imports have caused or are threatening to cause serious injury that cannot be easily remedied or would be difficult to remedy should the imposition of these measures be delayed.

Article 83

Provisional safeguard measures shall take the form of tariff increases, taking into consideration the following:

- The duration of the provisional measure shall not exceed 200 days.

- Should such measures take the form of tariff increases, they shall be promptly refunded if the investigation does not determine that increased imports have caused or threatened to cause serious injury to the domestic industry.

The GATT Safeguard Agreement

Article 2 Conditions

1) Members may apply a safeguard measure to a product only if that member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

2) Safeguard measures shall be applied to a product being imported irrespective of its source.

Article 3 Investigation

1) A member may apply a safeguard measure only following an investigation by the competent authorities of that member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearing or other appropriate means in which imports, exports and other interested parties, could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2) 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 authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4 Determination of serious injury or threat thereof

1) For the purposes of this agreement:

a) “Serious Injury” shall be understood to mean a significant overall impairment in the position of a domestic industry.

b) "Threat of Serious Injury" shall be understood to mean serious injury that is clearly imminent in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation conjecture or remote possibility.

c) In determining injury or threat thereof, a domestic industry shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

2) (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, capacity utilization, profits and losses and employment.

(b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

(c) The competent authorities shall publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as demonstration of the relevance of the factors examined.

Article 5 Application of safeguard measures

1) A member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should chose measures most suitable for the achievement of these objectives.

2) (a) In cases in which a quota is allocated among supplying countries, the member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonable practicable, the member concerned shall allot to members having a substantial interest in supplying the product shares based upon the proportions, supplied by such members during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A member may depart from the provision in subparagraph (a) provided that consultations under paragraph 3 of Article 12 are conducted under the auspices of the committee on safeguards provided for in paragraph 1 of Article 13 and that clear demonstration is provided to the committee that (i) imports from certain members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in representative period (ii) the reasons for the departure from the provisions in subparagraph (a) are justified, and (iii) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph I of Article 7. The departure referred to above shall not be permitted in the case of threat of serious injury.

Article 6 Provisional safeguard measures

In critical circumstances where delay would cause damage, which would be difficult to repair, a member may take a provisional safeguard measure pursuant to a preliminary determination that is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2, and 3 of Article 7.

Article 7 Duration and review of safeguard measures

1) A member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2) The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing member have determined in conformity with the procedures set out in Articles 2, 3, 4, and 5 that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting and provided that the pertinent provisions of Articles 8 and 12 are observed.

3) The total period of application of a safeguard measure, including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4) In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization.

5) No safeguard measure shall be applied again to the import of a product which has been

subject to such a measure, taken after the date of entry into force of the WTO agreement, 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.

6) Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product or

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

Article 12 Notification and Consultation

1) A member shall immediately notify the committee on safeguards upon:

a) Initiating an investigation process relating to serious injury or threat thereof and the reasons for it.

b) Making a finding of serious injury or threat thereof caused by increased imports.

c) Taking decision to apply or extend a safeguard measure.

2) In making the notifications referred to in paragraph 1(b) and 1(c) the member proposing to apply or extend a safeguard measure shall provide the committee on safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure evidence that the industry concerned is adjusting shall also be provided. The council for trade in goods or the committee on safeguards may request such additional information as they may consider necessary from the member proposing to apply or extend the measure.

3) A member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those members having a substantial interest as exporters of the product concerned, with a view to, *inter alia*, review the information provided under paragraph 2, exchange views on the measure and reach an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4) A member shall make a notification to the committee on safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.

5) The result of the consultations referred to in this Article (as well as the results of midterm reviews referred to in paragraph 4 of Article 7, the form of compensation referred to in paragraph 1 of Article 8, and the proposed suspensions of concessions and other obligations referred to in

paragraph 2 of Article 8) shall be notified immediately to the Council for Trade in Goods by the members concerned.

6) Members shall notify promptly the committee on safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

7) Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the committee on safeguards no later than 60 days after the date of entry into force of the WTO Agreement.

8) Any member may notify the committee on safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this agreement that have not been notified by other members that are required by this agreement to make such notification.

9) Any member may notify the committee on safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.

10) All notification to the Council for Trade in Goods referred to in this agreement shall normally be made through the committee on safeguards.

11) The provisions on notification in this agreement shall not require any member to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

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