

**BILATERAL SAFEGUARD MEASURES FOR VEHICLES CLASSIFIED
UNDER HS HEADING 8703 AND 8704**

SECTION A

DEFINITIONS

ARTICLE 1

Definitions

For the purposes of this Annex, the following definitions apply:

- (a) "bilateral safeguard measure for vehicles" means bilateral safeguard measure for vehicles classified under HS headings 8703 and 8704, as defined in this Annex;
- (b) "competent investigating authority" means:
 - (i) for the European Union, the European Commission; and

(ii) for MERCOSUR:

- (A) for Argentina, the Secretaría de Industria y Comercio del Ministerio de Economía or its successor;
- (B) for Brazil, the Secretaria de Comércio Exterior of the Ministério do Desenvolvimento, Indústria, Comércio e Serviços or its successor;
- (C) for Paraguay, the Ministerio de Industria y Comercio or its successor; and
- (D) for Uruguay, the Asesoría de Política Comercial del Ministerio de Economía y Finanzas or its successor;

(c) "domestic vehicle industry" means the producers as a whole of the like or directly competitive vehicles operating in the territory of a Party or, failing that, those whose collective output of the like or directly competitive vehicles normally constitutes more than 50 % (fifty percent) and in exceptional circumstances not less than 25 % (twenty-five percent) of the total production of such vehicles;

(d) "injury" means material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry;

(e) "interested parties" includes:

- (i) exporters or foreign producers or importers of a vehicle subject to investigation, or a trade or business association a majority of whose members are producers, exporters or importers of such vehicle;
- (ii) the government of the exporting Party; and
- (iii) producers of the like or directly competitive vehicle in the importing Party or a trade and business association a majority of whose members produces the like or directly competitive vehicle in the territory of the importing Party;

this list does not preclude the Parties from allowing domestic or foreign parties other than those mentioned above to be included as interested parties;

(f) "like or directly competitive vehicle" means:

- (i) a vehicle which is identical, meaning alike in all aspects, to the vehicle under consideration;
- (ii) another vehicle which, although not alike in all aspects, has characteristics closely resembling those of the vehicle under consideration; or
- (iii) a vehicle which directly competes within the internal market of the importing Party, given its degree of substitutability, basic physical characteristics and technical specifications, final uses and channels of distribution;

this list of factors is not exhaustive nor can one or several of these factors necessarily give decisive guidance; and

(g) "transition period" means:

- (i) 12 (twelve) years from the date of entry into force of this Agreement, for vehicles for which the Tariff Elimination Schedule provided for in Annex 2-A of the Party applying the measures provides for tariff elimination in less than 10 (ten) years;
- (ii) 18 (eighteen) years from the date of entry into force of this Agreement, for vehicles for which the Tariff Elimination Schedule provided for in Annex 2-A of the Party applying the measures provides for tariff elimination in 10 (ten) or 15 (fifteen) years;
- (iii) 20 (twenty) years from the date of entry into force of this Agreement, for vehicles for which the Tariff Elimination Schedule provided for in Annex 2-A of the Party applying the measures provides for tariff elimination in 18 (eighteen) years; or
- (iv) 25 (twenty-five) years from the date of entry into force of this Agreement, for vehicles for which the Tariff Elimination Schedule provided for in Annex 2-A of the Party applying the measures provides for tariff elimination in 25 (twenty-five) years or more.

SECTION B

CONDITIONS FOR APPLICATION OF BILATERAL SAFEGUARD MEASURES FOR VEHICLES CLASSIFIED UNDER HS HEADINGS 8703 AND 8704

ARTICLE 2

Application of bilateral safeguard measures for vehicles

1. With a view to preserving existing levels of foreign investment in the automotive sector and without prejudice to the rights and obligations referred to in Chapter 8 of this Agreement, the Parties may, in exceptional circumstances, apply bilateral safeguard measures under the conditions established in this Section if, after the date of entry into force of this Agreement, imports of vehicles classified under HS headings 8703 and 8704 under preferential terms have increased in such quantities, absolute or relative to domestic production or consumption, and under such conditions as to cause injury to the domestic industry of the like or directly competitive vehicles of the importing Party.
2. Bilateral safeguard measures for vehicles shall be applied only to the extent necessary to prevent or remedy the injury.
3. Bilateral safeguard measures for vehicles shall be applied following an investigation by the competent investigating authorities of the importing Party under the procedures established in this Annex.

4. The application of bilateral safeguard measures for vehicles shall not entail any means of trade compensation.

ARTICLE 3

Timeframe for the application of bilateral safeguard measures for vehicles

A Party shall not apply, extend or maintain in force a bilateral safeguard measure for vehicles beyond the expiration of the transition period.

ARTICLE 4

Conditions and limitations

1. MERCOSUR may apply bilateral safeguard measures for vehicles to imports from the European Union:
 - (a) as a sole entity, provided that all requirements to determine the existence of injury being caused by the imports of a vehicle under preferential terms have been fulfilled, on the basis of conditions applied to MERCOSUR; or

(b) on behalf of one or more of the Signatory MERCOSUR States, in which case the requirements for the determination of the existence of injury being caused by the imports of a vehicle under preferential terms shall be based on the conditions prevailing in the relevant Signatory MERCOSUR State or Signatory MERCOSUR States; and the measure shall be limited to that Signatory MERCOSUR State or those Signatory MERCOSUR States. The adoption of a bilateral safeguard measure for vehicles by MERCOSUR on behalf of one or more Signatory MERCOSUR States shall not prevent another Signatory MERCOSUR State from adopting a measure regarding the same vehicle afterwards.

2. The European Union may apply bilateral safeguard measures for vehicles to imports from MERCOSUR as a sole entity or from one or more Signatory MERCOSUR States if the injury is being caused by imports of vehicle under preferential terms.

3. Where the European Union determines that a measure is to apply to MERCOSUR as a sole entity, Paraguay shall be exempted from the application of the measure, unless the result of an investigation demonstrates that the existence of injury is also being caused by imports of vehicles from Paraguay under preferential terms.

SECTION C

FORM AND DURATION OF BILATERAL SAFEGUARD MEASURES FOR VEHICLES CLASSIFIED UNDER HS HEADINGS 8703 AND 8704

ARTICLE 5

Form of bilateral safeguard measures for vehicles

1. Bilateral safeguard measures for vehicles adopted pursuant to this Annex shall consist of:
 - (a) a temporary suspension of the Tariff Elimination Schedule for the vehicle concerned provided for in Annex 2-A; or
 - (b) a temporary reduction of the tariff preference for the vehicle concerned so that the rate of customs duty does not exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty on the vehicle in effect at the time the measure is taken; and
 - (ii) the base rate of customs duty on the vehicle referred to in Annex 2-A.

2. Where a bilateral safeguard measure for vehicles as referred to in paragraph 1(b) of this Article is adopted, a Party should ensure that historical trade flows that do not cause injury to the domestic industry of the importing Party are preserved. The Party that applies a bilateral safeguard measure for vehicles shall establish an import quota for the product concerned within which such product continues to benefit from the agreed preference established under this Agreement. The import quota shall not be less than the average imports of the product concerned during the thirty-six (36) month-period previous to the last twelve (12) months of the period of data collection for the investigation to determine injury.

ARTICLE 6

Margin of preference

Upon termination of the bilateral safeguard measures for vehicles, the margin of preference shall be that which would be applied to the vehicle in the absence of the measure under Annex 2-A.

ARTICLE 7

Duration of bilateral safeguard measures for vehicles

Bilateral safeguard measures for vehicles shall be applied only for the period necessary to prevent or remedy the injury and to facilitate adjustment of the domestic industry. That period, including the period of application of any provisional measure, shall not exceed 3 (three) years.

ARTICLE 8

Extension of bilateral safeguard measures for vehicles

1. Bilateral safeguard measures for vehicles may be extended once for a maximum period of two years, if it has been determined, in accordance with the procedures set out in this Annex, that injury would be likely to continue or recur if the measure were removed or modified. The extended measure shall not be more restrictive than it was at the end of the initial period.
2. No bilateral safeguard measure for vehicles shall be applied again to the import of a vehicle which has been subject to such a measure, unless a period of time equal to half of the total duration of the previous bilateral safeguard for vehicles has elapsed.

SECTION D

INVESTIGATION AND TRANSPARENCY PROCEDURES

ARTICLE 9

Investigation

1. In conducting the investigation to determine whether increased imports have caused injury to a domestic vehicle industry as referred to in Article 2 of this Annex, the competent investigating authority 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 vehicle concerned in absolute and relative terms; the share of the domestic market taken by increased imports; and changes in the number of workers employed, installed capacity and capacity utilisation in the vehicle industry, sales, including prices, production, productivity, profits and losses. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.
2. The competent investigating authority shall demonstrate, on the basis of objective evidence, the existence of a causal link between increased imports of the vehicle concerned and injury. The competent investigating authority shall also evaluate all known factors other than increased imports under preferential terms of this Agreement that might be at the same time causing injury to the domestic industry. The effects of an increase in imports of the vehicles concerned from other countries shall not be attributed to the imports under preferential terms.

3. In conducting an injury investigation as referred to in paragraph 1, a competent investigating authority should collect data over a period of at least 36 (thirty-six) months ending as close to the date of the presentation of a request to initiate an investigation as is practicable.

ARTICLE 10

Initiation of an investigation

1. If there is sufficient *prima facie* evidence to justify such initiation, an investigation may be initiated upon request of:

- (a) the domestic vehicle industry or a trade and business association acting on behalf of the domestic vehicle industry of the like or directly competitive vehicles in the importing Party;
 - or
- (b) one or more importing Member States of the European Union or Signatory MERCOSUR States.

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

- (a) the name and description of the imported vehicle concerned, its tariff heading and the tariff treatment in force, as well as the name and description of the like or directly competitive vehicle;
- (b) the names and addresses of the producers or association that submit the request, if applicable;

- (c) if reasonably available, a list of all known producers of the like or directly competitive vehicle; and
- (d) evidence that the conditions for imposing the bilateral safeguard measure for vehicles set out in Article 2(1) of this Annex are met.

3. For the purposes of point (d) of paragraph 2, the request to initiate an investigation shall contain the following information:

- (a) the production volume of producers submitting or represented in the application and an estimation of the production of other known producers of the like or directly competitive vehicles;
- (b) the rate and amount of the increase in total and bilateral imports of the vehicle concerned in absolute and relative terms, for at least over the 36 (thirty-six) months prior to the date of the presentation of a request to initiate an investigation, for which information is available;
- (c) the level of import prices during the same period; and
- (d) if information is available, objective and quantifiable data regarding the like or directly competitive vehicle, on the volume of total production and of total sales in the internal market, inventories, prices for the internal market, productivity, capacity utilisation, employment, profits and losses, productive investment data, and market share of the requesting firms or of those represented in the request, for at least the last 36 (thirty-six) months previous to the presentation of the request, for which information is available.

ARTICLE 11

Confidential information

Article 9.12 of this Agreement applies *mutatis mutandis* to this Annex.

ARTICLE 12

Timeframe for the investigation

Article 9.13 of this Agreement applies *mutatis mutandis* to this Annex.

ARTICLE 13

Transparency

Article 9.14 of this Agreement applies *mutatis mutandis* to this Annex.

SECTION E

PROVISIONAL BILATERAL SAFEGUARD MEASURES FOR VEHICLES CLASSIFIED UNDER HS HEADINGS 8703 AND 8704

ARTICLE 14

Provisional bilateral safeguard measures for vehicles

1. In critical circumstances where delay may cause damage which would be difficult to repair, a Party, after due notification, may take a provisional bilateral safeguard measure for vehicles pursuant to a preliminary determination that there is clear evidence that imports under preferential terms have increased and that such imports have caused injury. The duration of the provisional measure shall not exceed 270 (two hundred and seventy) days, during which period the requirements of this Annex shall be met. If the final determination concludes that there was no injury to the domestic industry caused by imports under preferential terms, the increased tariff or provisional guarantee, if collected or imposed under provisional measures, shall be promptly refunded, in accordance with the domestic regulation of the relevant Party.
2. Provisional bilateral safeguard measure for vehicles shall not be taken against Paraguay, unless the result of the preliminary determination pursuant to paragraph 1 demonstrates that the existence of injury is also being caused by imports of vehicles from Paraguay under preferential terms.

SECTION F

PUBLIC NOTICE

ARTICLE 15

Public notice on the initiation of an investigation

Article 9.16 of this Agreement applies *mutatis mutandis* to this Annex.

ARTICLE 16

Public notice on the application of bilateral safeguard measures for vehicles

Article 9.17 of this Agreement applies *mutatis mutandis* to this Annex.

SECTION G

NOTIFICATIONS AND CONSULTATIONS

ARTICLE 17

Notifications

Article 9.18 of this Agreement applies *mutatis mutandis* to this Annex.

ARTICLE 18

Consultations

Article 9.19 of this Agreement applies *mutatis mutandis* to this Annex.

SECTION H

OUTERMOST REGIONS OF THE EUROPEAN UNION

ARTICLE 19

Outermost regions of the European Union

Article 9.20 of this Agreement applies *mutatis mutandis* to this Annex.
