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Committee on Safeguards

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

TUNISIA

The following communication, dated 11 December 2000, has been received from the Permanent Mission of Tunisia.

The Permanent Mission of Tunisia at Geneva presents its compliments to the Secretariat of the World Trade Organization and has the honour to enclose a copy of Law No. 98-106 of 18 December 1998 on import safeguard measures.

LAWS

Law No. 98-106 of 18 December 1998 on Import Safeguard Measures¹

In the name of the people,

Following adoption by the Chamber of Deputies,

The President of the Republic hereby promulgates the following law:

Article 1

The purpose of this Law is to establish rules on safeguard measures and their implementing regulations with a view to protecting domestic products from massive imports likely to create difficulties for the domestic industry, as provided for by Article XIX of the GATT 1994 and the Agreement on Safeguards of the World Trade Organization, ratified by Law No. 95-06 of 23 January 1995.

CHAPTER I

Common Provisions

Article 2

Safeguard measures are measures taken to prevent or remove serious injury to a domestic industry due to massive imports of a like or directly competitive product.

Safeguard measures shall be described as provisional when they are determined in accordance with Articles 22 *et seq.*

For the purposes of this Law:

- "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 a situation in which serious injury to the domestic industry is imminent.

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:

- "Domestic industry" shall be understood to mean the producers as a whole of like or directly competitive products or those whose collective output of the like or directly competitive products constitutes a major proportion of the domestic production of those products.

¹ Preparatory work: Discussion and adoption by the Chamber of Deputies at its session of 24 November 1998.

CHAPTER II

Conditions of Application of Safeguard Measures

Article 3

A safeguard measure may be decided upon only if it has been determined that a product, irrespective of its source, has been imported in massive quantities, absolute or relative to domestic production, and in such a way as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Article 4

An investigation with a view to the adoption of a safeguard measure may be initiated upon application to the Minister responsible for trade by the domestic industry, or by the trade associations or other bodies concerned acting on its behalf. The application shall include evidence of serious injury suffered or the threat of serious injury, together with evidence of a causal link between the imports in question and the alleged injury.

Article 5

The provisions of Article 4 notwithstanding, an investigation may be initiated without the Minister responsible for trade having received an application by or on behalf of the domestic industry if the Minister responsible for trade has sufficient evidence of serious injury or threat of serious injury to a domestic industry.

CHAPTER III

Preliminary Examination, Investigation, Form and Duration of Safeguard Measures

SECTION I

Preliminary Examination

Article 6

If, after a preliminary examination completed within one month of receipt of the application mentioned in Article 4 or the taking of the decision indicated in Article 5, it appears that there is sufficient evidence of injury or threat of injury to a domestic industry, the Minister responsible for trade shall authorize the initiation of an investigation and the publication of a notice in the *Journal Officiel* (Official Journal) of the Tunisian Republic and shall notify the Committee on Safeguards of the World Trade Organization that an investigatory process has been initiated.

Article 7

The public notice shall indicate the nature of the product and the country or countries concerned and shall include a summary of the information received and an invitation to submit any relevant information to the Minister responsible for trade.

The notice shall also fix the time-limit allowed to interested parties for making their views known in writing and the time-limit for participating in any hearings.

SECTION II

Investigation

Article 8

The services responsible for the investigation shall investigate and verify any information they consider appropriate, obtained from importers, traders, producers, associations and interested bodies.

Article 9

If it is shown that there are valid reasons for holding hearings attended by the natural or legal persons concerned and representatives of the exporting countries whose interests might be affected by the conclusions of the investigation, the Minister responsible for trade may grant such hearings, provided he has received a written request to that effect.

Article 10

If the services responsible for the investigation find themselves unable to obtain the necessary information within the time-limits laid down or the investigation is impeded, the investigation may be made on the basis of the facts available.

Article 11

Information obtained under this Law may not be used for purposes other than those for which it was requested.

Information which is by nature confidential or is provided on a confidential basis shall be treated as such and shall not be disclosed without the written permission of the party submitting it.

However, if it appears that such a request is not warranted and if the party that provided the information refuses to make it public or authorize its disclosure in full or in summary form, that information may be disregarded in the course of the investigation, unless it can be demonstrated convincingly from appropriate sources that it is correct.

Article 12

The investigation initiated by the Minister responsible for trade must determine, on the basis of objective evidence, the existence of a causal link between increased imports of the product in question and serious injury to the domestic industry concerned or threat thereof.

Article 13

The examination of the evolution of imports and the conditions of importation and the examination of the serious injury these imports are causing to the domestic producers of like or directly competitive products shall be based on:

- The volume of imports if these have increased significantly, either in absolute terms or relative to domestic production;
- the impact of the imports on domestic producers of like or directly competitive products;

- the consequences for the domestic producers of like or directly competitive products of the evolution of certain factors such as production, capacity utilization, inventories of the products concerned, sales, market share, prices, profits, return on investments, cash flow and employment.

Article 14

The provisions of Article 13 notwithstanding, if a threat of serious injury is alleged, the services responsible for the investigation shall determine whether the alleged threat is likely to develop into actual injury. To this end, they may take the following factors into account:

- The rate of increase of exports to Tunisia;
- the export capacity of the country of origin or exportation, whether directly disposable or likely to be available in the near future, and the probability that that capacity will be used for exports to Tunisia.

Article 15

The investigation shall be completed within nine months of its initiation. In exceptional circumstances, this period shall be extended by a further two months.

On completion of the investigation, the Minister responsible for trade shall inform the National Foreign Trade Council of the results obtained and the measures envisaged.

Article 16

After the National Foreign Trade Council has given its opinion, it may be decided either that:

- It is inadvisable to apply safeguard measures and, in this case, the Minister responsible for trade shall order the file to be closed;

or that:

- safeguard measures are to be applied and in this case the order instituting these measures shall be published in the *Journal Officiel*, with a report setting out the evidence gathered during the investigation and the reasoned conclusions to which it has led.

The Minister responsible for trade shall notify the Committee on Safeguards of the World Trade Organization of the implementation of the safeguard measures. This notification shall specify the evidence for the existence of serious injury or threat thereof caused by increased imports of the product in question, together with the measure taken, its date of application, its duration and the timetable for its progressive liberalization.

Article 17

No safeguard measure shall be applied against a product originating in a developing country Member of the World Trade Organization if its share of imports of the product in question does not exceed 3 per cent, provided that developing country Members of the World Trade Organization with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.

SECTION III

Form of Safeguard Measures

Article 18

Safeguard measures may take the form of quantitative restrictions or tariff increases.

Article 19

In determining the import quantities and/or values of a product where the safeguard measure consists in establishing a quota, the following shall be taken into account:

- The average of imports in the last three most representative years for which statistics are available, unless justification is given that a different level is necessary to prevent or remedy serious injury;
- any other factor considered relevant.

Article 20

If it has been decided to allocate a quota among several exporting countries, the Minister responsible for trade may enter into consultations concerning the allocation of the quota with those countries having a substantial interest in exporting the product concerned.

If this method is not applied, the quota shall be allotted to the exporting countries in proportion to their respective shares of imports of the product in question supplied during a previous representative period, account being taken of any factors which may have affected or may be affecting the trade in the product.

However, in the event of serious injury, the method described in the previous subparagraph may be departed from, if imports from a supplier country or countries have increased disproportionately in relation to the total increase in imports of the product concerned in a previous representative period.

Such departure shall take into account the obligation to hold consultations under the auspices of the Committee on Safeguards of the World Trade Organization.

Article 21

The provisions of Article 20 notwithstanding, products subject to a quota may not be imported without the authorization of the Minister responsible for trade.

Article 22

After obtaining the opinion of the National Foreign Trade Council, provisional safeguard measures in the form of tariff increases may be taken, in accordance with the law, under the following conditions:

- When critical circumstances, where delay would cause damage which it would be difficult to repair, make immediate action necessary;

- when a preliminary determination has shown that there is sufficient evidence that increased imports have caused or are threatening to cause serious injury.

Before applying a provisional safeguard measure, the Minister responsible for trade shall notify the Committee on Safeguards of the World Trade Organization of his intention:

- During the application of provisional safeguard measures the investigation must be continued, regardless of the duration of those measures.

Article 23

Tariff increases collected under a provisional safeguard measure shall be refunded if the Minister responsible for trade decides, upon conclusion of the investigation and after obtaining the opinion of the National Foreign Trade Council, that the increases should not have been applied for lack of serious injury or threat thereof.

Article 24

The Minister of Finance shall arrange for the refunding of the sum in question upon decision of the Minister responsible for trade, taken in accordance with Article 23 of this Law.

Article 25

As soon as a safeguard measure has been taken, the Minister responsible for trade shall initiate consultations with the countries concerned with a view to compensating them for the adverse effects on their trade, in accordance with the provisions of the Agreement on Safeguards of the World Trade Organization.

SECTION IV

Duration of Safeguard Measures

Article 26

The period of application of safeguard measures, including any provisional measure, shall not exceed four years.

No provisional safeguard measure may be applied for more than 200 days.

However, when it is found that a safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, it may be decided, after obtaining the opinion of the National Foreign Council, to extend the period of application of the safeguard measure, in the light of the results of a new investigation conducted in accordance with the rules laid down in Chapter III of this Law.

The period of application of the safeguard measure, including any extension, shall not exceed ten years.

Article 27

When a safeguard measure whose period of application exceeds one year has been taken, it shall be progressively liberalized at regular intervals during the period of application to facilitate the adjustment of the industry concerned.

When the duration of the measure exceeds three years, it shall be reviewed not later than its mid-term.

Any review of a safeguard measure shall be conducted in accordance with the procedures laid down in Chapter III of this Law.

Article 28

No safeguard measure may be applied again to the import of a product which has been subject to a previous safeguard measure under this Law for a period of time equal to half the period of application of the previous safeguard measure, provided that the period of non-application is at least two years.

The provisions of the preceding subparagraph notwithstanding, a safeguard measure may be applied again to the import of a product, for a period of not more than 180 days, if the following conditions are satisfied:

- At least one year has elapsed since the date of introduction of a safeguard measure on the import of that product;
- 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 29

The Minister responsible for trade shall arrange for the publication of provisional, initial and renewed safeguard measures in the *Journal Officiel*.

CHAPTER IV

Other Provisions

Article 30

If the evolution of imports of a product threatens to cause injury to domestic producers, imports of that product may be placed under preliminary surveillance in accordance with procedures laid down by order of the Minister responsible for trade.

Article 31

Notwithstanding the provisions of this Law laying down the investigating procedure for determining the existence of a causal link between increased imports of the product in question and serious injury to a domestic industry or threat thereof, a special safeguard measure may be taken in accordance with Article 5 of the Agreement on Agriculture of the World Trade Organization on the import of agricultural products.

Article 32

The information supplied and the investigations shall be examined by officials of the Minister responsible for trade or other duly authorized officials. These officials may make visits and carry out inspections and investigations on workplaces or production premises belonging to natural or legal persons. They shall be bound by professional secrecy and shall be subject to the provisions of Article 254 of the Criminal Code.

This Law shall be published in the *Journal Officiel* of the Tunisian Republic and enforced as State law.

Tunis, 18 December 1998.

Zine El Abidine Ben Ali
