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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. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.
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; and
 - (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.

1.2 Article 7.4

1. In dismissing a claim under Article 12 regarding an alleged failure to notify modifications of a definitive safeguard measure which increased the restrictiveness of that measure, the Panel Report in *Argentina – Footwear (EC)* observed:

"[T]he *only* modifications of safeguard measures that Article 7.4 contemplates are those that *reduce* its restrictiveness (i.e., to eliminate the measure or to increase their pace of its liberalisation pursuant to a mid-term review). The Agreement does not

contemplate modifications that *increase* the restrictiveness of a measure, and thus contains no notification requirement for such restrictive modifications.

We note that the modifications of the definitive safeguard measure made by Argentina are not contemplated by Article 7, and thus Article 12 does not foresee notification requirements with respect to such modifications. Any *substantive* issues pertaining to these subsequent Resolutions would need to be addressed under Article 7, but the European Communities made no such claim."¹

2. The Panel in *Ukraine – Passenger Cars* rejected Japan's argument that Article 7.4 requires notification of a progressive liberalization programme prior to the application of the safeguard measure:

"The second clause of the first sentence does not say that a safeguard measure must be progressively liberalized at regular intervals 'as notified under the provisions of paragraph 1 of Article 12'. In our view, the conspicuous absence of a reference in the second clause of the first sentence of Article 7.4 to a notification under Article 12.1, particularly in the light of the reference in the first clause, suggests that failure to notify a timetable for progressive liberalization in advance of the application of a safeguard measure does not necessarily result in an inconsistency with Article 7.4. Nor do we see any reason to conclude that a breach of Article 7.4 would necessarily occur if a timetable has not been made available otherwise than through a notification under Article 12.1.

...

Significantly, however, a Member can, in our view, comply with its obligation in Article 7.4 even if it has not previously provided a timetable for progressive liberalization. Article 7.4 is a substantive provision that requires actual liberalization of the measure. The mere fact that a Member has failed to provide a timetable for such liberalization does not preclude that Member from taking the required liberalization steps regardless. We see nothing in Article 7.4 that prohibits a Member from taking liberalization steps pursuant to a decision that post-dates the decision to apply a safeguard measure. Moreover, as we discuss below, our conclusion does not render Article 7.4 inoperative, as it remains possible, even in the absence of a timetable provided in advance, for a complaining party to demonstrate and a panel to determine whether a Member has acted inconsistently with Article 7.4, by failing to actually progressively liberalize its safeguard measure."²

3. The Panel in *Ukraine – Passenger Cars*, in rejecting Japan's argument that Ukraine had acted inconsistently with Article 7.4 by not starting the liberalization of the measure as of the date of the Panel's establishment, held that "regular intervals" within the meaning of Article 7.4 meant "uniform intervals" but that Article 7.4 did not specify how long such regular intervals should be:

"The second issue raised by Japan's claim is whether Ukraine has acted inconsistently with Article 7.4 because, as of the date of establishment of this panel, it had failed to liberalize the safeguard measure. We recall that the relevant requirement is to liberalize 'at regular intervals during the period of application'. The word 'regular' is defined as 'recurring or repeated at fixed times, recurring at short uniform intervals'. Applying this definition in the specific context of Article 7.4, we consider that regular intervals of liberalization are uniform intervals, that is to say, intervals that are equally separated in time. We find further support for this view from the reference in Article 7.4 itself to the purpose of the requirement in question, which is to 'facilitate adjustment'. Progressive liberalization that proceeds at equal intervals over the period of application facilitates the adjustment of the domestic industry by exposing it to greater foreign competition following a pattern that allows – and forces – the industry to adjust to each stage of that liberalization, and prepare itself for the next one, at equal time intervals. The requirement of progressive liberalization also and notably precludes the importing Member from back-loading liberalization, i.e. not taking any

¹ Panel Report, *Argentina – Footwear (EC)*, paras. 8.303-8.304.

² Panel Report, *Ukraine – Passenger Cars*, paras. 7.358 and 7.360.

liberalization steps until a late stage in the period of application of a safeguard measure. Delaying liberalization in this way could create a disincentive for the domestic industry to undertake appropriate efforts at adjustment from the outset of the period of application, thus providing increased protection and diminishing the impetus to adjust to competition from imports.

Article 7.4 does not establish any requirements or guidelines as to how long the regular intervals should be. The only constraint it imposes is that the intervals be such as will 'facilitate adjustment' of the domestic industry. In this case, Ukraine decided to progressively liberalize the measure that was to apply for three years after 12 and 24 months, that is, at regular intervals of 12 months. In our view, for a safeguard measure with an expected duration of 36 months, liberalization at the 12- and 24-month marks does not seem unreasonable. Such two-step liberalization ensures liberalization that is not only regular as well as progressive, but also apt to facilitate adjustment of the domestic industry by increasing its exposure to foreign competition."³

4. The Panel in *Ukraine – Passenger Cars* added that the Agreement on Safeguards did not require that progressive liberalization start at a given point in time:

"Moreover, as there is nothing in the Agreement on Safeguards that required Ukraine to have begun the progressive liberalization of its safeguard measure at any given point in time, the lack of any liberalization as of the date of establishment of this Panel does not of itself require the conclusion that Ukraine failed to liberalize its safeguard measure at regular intervals."⁴

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³ Panel Report, *Ukraine – Passenger Cars*, paras. 7.362-7.363.

⁴ Panel Report, *Ukraine – Passenger Cars*, para. 7.364.