B Commonwealth Gazettes and GATT Article XIX

This appendix consists of:

* the *Commonwealth of Australia Gazette*, ‘Establishment Of General Procedures For Inquiries By The Productivity Commission Into Whether Safeguard Action Is Warranted Under The Agreement Establishing The World Trade Organization’, No. S 297, Thursday, 25 June 1998
* the *Commonwealth of Australia Gazette*, ‘Amendment of general procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization’, No. GN 39, 5 October 2005
* GATT 1994 Article XIX.

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| Australian Coat of Arms | **Commonwealth**  **of Australia** | **Gazette** |
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**ESTABLISHMENT OF GENERAL PROCEDURES FOR INQUIRIES BY THE PRODUCTIVITY COMMISSION INTO WHETHER SAFEGUARD ACTION IS WARRANTED UNDER THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION**

1. In order to comply with the requirements of the Agreement Establishing the World Trade Organization (WTO Agreement), and in particular the Agreement on Safeguards (Safeguards Agreement) and Article XIX of the General Agreements on Tariffs and Trade 1994 (GATT 1994), this notice establishes the general procedures for inquiries into safeguard action by the Productivity Commission (Commission) in respect of a reference under Parts 2 and 3 of the *Productivity Commission Act 1998.*

2. A reference under Parts 2 and 3 of the *Productivity Commission Act 1998* in respect of safeguard action will designate the product being imported and request an inquiry and report by the Commission on:

(a) whether the conditions are such that safeguard measures would be justified under the WTO Agreement;

(b) if so, what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment; and

(c) whether, having regard to the Government's requirements for assessing the impact of regulation which affects business those measures should be implemented.

3. A "**safeguard measure**"means a measure provided for in Article XIX of GATT 1994, the rules for which are established by the Safeguards Agreement. A safeguards measure would be in the form of a quota, a tariff quota, or an increased level of tariff.

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| *2 Special Gazette* | *Commonwealth of Australia Gazette* |
|  | *No. S 297, 25 June 1998* |

Conditions

4. The Commission is to report on whether the product under reference is being imported into Australia 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.

5. Safeguard measures have to be applied to a product being imported irrespective of its source, except:

(a) product determined to be of New Zealand origin pursuant to the Australia New Zealand Closer Economic Relations Trade Agreement, which shall be excluded from the inquiry; and

(b) product originating in a developing country Member of the WTO shall be exempted from such measures as long as its share of imports of the product concerned does not exceed 3%, provided that developing country Members of the WTO with less than 3% import share collectively account for not more than 9% of total imports of the product.

Inquiry

6. Reasonable public notice must be given to all interested parties in accordance with section 14 of the *Productivity Commission Act* 1998. The inquiry must involve public hearings or other appropriate means in which importers, exporters and other interested parties can 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.

7. In accordance with section 12 of the *Productivity Commission Act* 1998 a report shall be published promptly setting forth the Commission's findings and reasoned conclusions reached on all pertinent issues of fact and law. The report will include a detailed analysis of the case under inquiry as well as a demonstration of the relevance of the factors examined. All factors specified in these procedures must be considered.

8. 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 Commission. 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 be summarized, the reasons why a summary cannot be provided. However, if the Commission find

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| *Commonwealth of Australia Gazette* | *Special Gazette 3* |
| *No. S 297, 25 June 1998* |  |

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, it may disregard such information unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

Determination of Serious Injury or Threat Thereof

9. "**Serious injury**" means a significant overall impairment in the position of a domestic industry.

10. "**Threat of serious injury**"means serious injury that is clearly imminent,in accordance with the provisions of paragraphs 13 and 14. 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.

11. In determining injury or threat thereof, a "**domestic industry**" meansthe producers as a whole of the like or directly competitive products operating in Australia, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

12. "**Like product**" means a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

13. In the inquiry to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Commission 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, productivity, capacity utilization, profits and losses, and employment.

14. The determination referred to in paragraph 13 shall not be made unless this inquiry 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.

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| *4 Special Gazette* | *Commonwealth of Australia Gazette* |
|  | *No. S 297, 25 June 1998* |

Application of Safeguard Measures

15. A safeguard measure can only be applied 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.

Provisional Safeguard Measures

16. A reference can also be made to the Commission for an accelerated report to determine whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair. The Commission will report to the Minister on whether there is clear evidence that increased imports have caused or are threatening tocause serious injury. If the Commission finds that such circumstances exist, then it will also recommend what provisional measures would be appropriate for up to 200 days. Such measures should take the form of tariff increases unless that would not be sufficient to prevent serious injury. The provisional measures would be revoked when the Government reached a decision on the imposition of safeguard measures following the receipt of the report by the Commission.

Duration and Review of Safeguard Measures

17. The Commission shall also make recommendations about the duration of the measures up to a four year period. The period is to include any period where provisional measures have been in place.

18. Where safeguard measures are imposed, the Minister may refer to the Commission for inquiry and report the question of the extension of the period for safeguard measures beyond four years and up to eight years.

19. The inquiry by the Commission to advise whether the safeguard measure continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is adjusting shall be in conformity with the procedures set out above. A measure so extended is not to be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

*Commonwealth of Australia Gazette*

*No. GN 39, 5 October 2005 Government Departments 2443*

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**Amendment of general procedures for**

**inquiries by the Productivity Commission**

**into whether safeguard action is warranted**

**under the Agreement establishing the**

**World Trade Organization**

In order to comply with the requirements of the Singapore Australia Free Trade Agreement, the Australia United States **Free Trade** Agreement and the Thailand Australia Free Trade Agreement, this notice amends the General procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization Instrument.

*Note* The general procedures were published in Commonwealth *Gazette* No S 297 of 25 June 1998, and notified to the World Trade Organization. The general procedures relate to inquiries into safeguard action by the Productivity Commission in respect of a reference under Parts 2 and 3 of the *Productivity Commission Act* 1998.

*Government Departments 2443 Commonwealth of Australia Gazette*

*No. GN 39, 5 October 2005*

**Amendments**

(section 3)

**[1] Paragraph 5 (a)**

*omit*

which shall be excluded from the inquiry; and

*insert*

which shall be excluded; and

**[2] Paragraph 5 (b)**

*omit*

imports of the product.

*insert*

imports of the product; and

**[3] After paragraph 5 (b)**

*insert*

(c) product determined to be of Singapore origin pursuant to the Singapore Australia Free Trade Agreement, which shall be excluded; and

(d) product determined to be of United States origin pursuant to the Australia United States Free Trade Agreement, which may be excluded if those imports are not a substantial cause of serious injury**, or threat thereof**; and

(e) product determined to be of Thai origin pursuant to the Thailand Australia Free Trade Agreement, which may be excluded if those imports are not a cause of serious injury **or threat thereof or of serious damage or actual threat thereof**.

## GATT 1994 Article XIX

### Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Contracting Parties as far in advance as may be practicable and shall afford the Contracting Parties and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Contracting Parties, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the Contracting Parties do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.