

## Chapter VI: Emergency Action

### Article VI.1 Article XIX of the GATT 1994 and the Agreement on Safeguards of the WTO.

Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the *Agreement on Safeguards* of the WTO Agreement and any successor agreements.

### Article VI.2 Bilateral Actions

1. Subject to paragraphs 2 through 4, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of the other Party in such increased quantities and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good;

(b) increase the rate of duty on the good to a level not to exceed the lesser of:

(i) the most-favoured-nation (MFN) applied rate of duty in effect at the time the action is taken; and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on the good for the corresponding season immediately preceding the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

(a) a Party shall, without delay, deliver to the other Party written notice of, and a request for consultations regarding, the institution of a proceeding that could result in the application of emergency action against a good originating in the territory of the other Party;

(b) any such action shall be initiated no later than 1 year after the date of institution of the proceeding;

(c) no action may be maintained:

(i) for a period exceeding 3 years; or

(ii) beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;

(d) during the transition period, the Parties may apply emergency actions to the same good no more than 2 times;

(e) on the termination of a first action, the rate of duty shall be the rate that, according to the Party's Schedule to Annex III.3.1 (Tariff Elimination) for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the action, and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action:

(i) the rate of duty shall conform to the applicable rate set out in its Schedule to Annex III.3.1 (Tariff Elimination); or  
(ii) the tariff shall be eliminated in equal annual stages ending on the date set out in its Schedule to Annex III.3.1 (Tariff Elimination) for the elimination of the tariff; and

(f) a safeguard action may be applied a second time for up to three years, provided:

(i) the period of time that has elapsed since the initial application of the measure ended is equal to at least one half the initial period of application;  
(ii) the rate of duty for the first year of the second action shall not be greater than the rate that would be in effect in accordance with that Party's Schedule to Annex III.3.1 (Tariff Elimination) at the time the first action was imposed; and  
(iii) the rate of duty applicable to any subsequent year shall be reduced in equal steps such that the duty rate in the final year of the action is equivalent to the rate provided for in that Party's Schedule to Annex III.3.1 (Tariff Elimination) for that year.

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the other Party.

4. The Party taking an action under this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.

5. This Article does not apply to emergency actions respecting goods covered by Annex III.1 (Textile and Apparel Goods).

### **Article VI.3 Administration of Emergency Action Proceedings**

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex VI.3 (Administration of Emergency Action Proceedings).

4. This Article does not apply to emergency actions taken under Annex III.1 (Textile and Apparel Goods).

### **Article VI.4 Dispute Settlement in Emergency Action Matters**

Neither Party may request the establishment of an arbitral panel under Article XIII.8 (Establishment of an Arbitral Panel) regarding any proposed emergency action.

## **Article VI.5**      **Definitions**

For purposes of this Chapter:

**competent investigating authority** means the "competent investigating authority" of a Party as defined in Annex VI.5;

**contribute importantly** means an important cause, but not necessarily the most important cause;

**domestic industry** means the producers as a whole of the like or directly competitive good operating in the territory of a Party or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of those goods;

**emergency action** does not include any emergency action pursuant to a proceeding instituted prior to the entry into force of this Agreement;

**good originating** in the territory of a Party means an originating good;

**serious injury** means a significant overall impairment of a domestic industry;

**threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

**transition period** means the 7 year period beginning on the entry into force of this Agreement, except where, in the case of Costa Rica, the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

## **Annex VI.3**

### **Administration of Emergency Action Proceedings**

#### *Institution of a Proceeding*

1. An emergency action proceeding may be instituted by a petition or complaint by entities specified in domestic law. The entity filing the petition or complaint shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good.
2. A Party may institute a proceeding on its own motion or request the competent investigating authority to conduct a proceeding.
3. Except as provided in this Annex, the time periods applicable to these proceedings will be those established by the domestic law of each Party.

#### *Contents of a Petition or Complaint*

4. Where the basis for an investigation is a petition or complaint filed by an entity representative of a domestic industry, the petitioning entity shall, in its petition or complaint, provide the following information to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

- (a) product description: the name and description of the imported good concerned, the tariff subheading under which that good is classified, its current tariff treatment and the name and description of the like or directly competitive domestic good concerned;
- (b) representativeness:

- (i) the names and addresses of the entities filing the petition or complaint, and the locations of the establishments in which they produce the domestic good;

- (ii) the percentage of domestic production of the like or directly competitive good that such entities account for and the basis for claiming that they are representative of an industry; and

- (iii) the names and locations of all other domestic establishments in which the like or directly competitive good is produced;

- (c) import data: import data for each of the 5 most recent full years that form the basis of the claim that the good concerned is being imported in increased quantities, either in absolute terms or relative to domestic production as appropriate;

- (d) domestic production data: data on total domestic production of the like or directly competitive good for each of the 5 most recent full years;

- (e) data showing injury: quantitative and objective data indicating the nature and extent of injury to the concerned industry, such as data showing changes in the level of sales, prices, production, productivity, capacity utilization, market share, profits and losses, and employment;

- (f) cause of injury: an enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that increased imports, either actual or relative to domestic production, of the imported good are causing or threatening to cause serious injury, supported by pertinent data; and

- (g) criteria for inclusion: quantitative and objective data indicating the share of imports accounted for by imports from the territory of the other Party and the petitioner's views on the extent to which such imports are contributing importantly to the serious injury, or threat thereof, caused by imports of that good.

5. Petitions or complaints, except to the extent that they contain confidential business information, shall promptly be made available for public inspection on being filed.

#### *Notice Requirement*

6. On instituting an emergency action proceeding, the competent investigating authority shall publish notice of the institution of the proceeding in the official journal of the Party. The notice shall identify the petitioner or other requester, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the determination to be made, the time and place of the public hearing, dates of deadlines for filing briefs, statements and other documents, the place at which the petition and any other documents filed in the course of the proceeding may be inspected, and the name, address and telephone number of the office to be contacted for more information.

7. With respect to an emergency action proceeding instituted on the basis of a petition or complaint filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice required by paragraph 5 without first assessing carefully that the petition or complaint meets the requirements of paragraph 3, including representativeness.

#### *Public Hearing*

**8.** In the course of each proceeding, the competent investigating authority shall:

- (a)** hold a public hearing, after providing reasonable notice, to allow all interested parties, and any association whose purpose is to represent the interests of consumers in the territory of the Party instituting the proceeding, to appear in person or by counsel, to present evidence and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and
- (b)** provide an opportunity to all interested parties and any such association appearing at the hearing to cross-question interested parties making presentations at that hearing. Confidential Information

**9.** The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties and consumer associations providing such information furnish non-confidential written summaries thereof, or where they indicate that the information cannot be summarized, the reasons why a summary cannot be provided.

#### *Evidence of Injury and Causation*

**10.** In conducting its proceeding the competent investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, including the rate and amount of the increase in imports of the good concerned, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. In making its determination, the competent investigating authority may also consider other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital.

**11.** The competent investigating authority shall not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and serious injury, or threat thereof. Where 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.

#### **Deliberation and Report**

**12.** The competent investigating authority, before making an affirmative determination in an emergency action proceeding, shall allow sufficient time to gather and consider the relevant information, hold a public hearing and provide an opportunity for all interested parties and consumer associations to prepare and submit their views.

**13.** The competent investigating authority shall publish promptly a report, including a summary thereof in the official journal of the Party, setting out its findings and reasoned conclusions on all pertinent issues of law and fact. The report shall describe the imported good and its tariff item number, the standard applied and the finding made. The statement of reasons shall set out the basis for the determination, including a description of:

- (a)** the domestic industry seriously injured or threatened with serious injury;
- (b)** information supporting a finding that imports are increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and
- (c)** if provided for by domestic law, any finding or recommendation regarding the appropriate remedy and the basis therefor.

14. In its report, the competent investigating authority shall not disclose any confidential information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.

#### **Annex VI.5**

#### **Country-Specific Definitions**

For purposes of this Chapter:

**competent investigating authority** means:

- (a)** in the case of Canada, the Canadian International Trade Tribunal, or its successor; and
- (b)** in the case of Costa Rica, such body as may be established under that country's legislation.