

## CHAPTER EIGHT

### EMERGENCY ACTION

#### Article 8.01: Definitions

For purposes of this Chapter:

**Agreement on Safeguards** means the WTO *Agreement on Safeguards*;

**competent investigating authority** means:

- (a) in the case of Canada, the Canadian International Trade Tribunal, or its successor notified to the other Party through diplomatic channels; and
- (b) in the case of Panama, the Directorate-General of Trade Defence, or its successor notified to the other Party through diplomatic channels;

**domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party or those whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;

**emergency action** means an emergency action described in Article 8.03;

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

**substantial cause** means a cause that is important and not less important than any other cause;

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

**transition period** means the 10-year period beginning on the entry into force of this Agreement, except where 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 is the period of the staged tariff elimination for that good.

#### **Article 8.02: Global Safeguard Measures**

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards, which shall exclusively govern global safeguard actions, including the resolution of a dispute in respect thereof.

2. This Agreement does not confer additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if the competent investigating authority of that Party concludes that those imports are not a substantial cause of serious injury or threat thereof.

3. A Party may not adopt or maintain with respect to the same good at the same time:

- (a) an emergency action; and
- (b) a measure pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards.

### **Article 8.03: Bilateral Emergency Actions**

1. A Party may adopt an emergency action described in paragraph 2:
  - (a) only during the transition period; and
  - (b) if as a result of the reduction or elimination of a duty pursuant to this Agreement an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.
  
2. If the conditions set out in paragraph 1 and Articles 8.04 and 8.05 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and to facilitate adjustment:
  - (a) suspend the further reduction of a rate of duty provided for under this Agreement on the good; or
  - (b) increase the rate of duty on the good to a level not exceeding the lesser of:
    - (i) the most-favoured-nation (MFN) rate of duty in effect at the time the emergency action is taken, and
    - (ii) the base rate of duty as provided in the schedule to Annex 2.04 (National Treatment and Market Access for Goods – Tariff Elimination).

#### **Article 8.04: Notification and Discussions**

1. A Party shall, in writing, promptly notify and invite for discussions the other Party in connection with:

- (a) initiating an emergency action proceeding;
- (b) making a finding of serious injury, or threat thereof, under the conditions set out in Article 8.03(1); and
- (c) applying an emergency action.

2. A Party shall without delay, provide to the other Party a copy of the public version of any notice or any report by a competent investigating authority issued in connection with matters notified pursuant to paragraph 1.

3. If a Party accepts an invitation for discussions made pursuant to paragraph 1, the Parties shall enter into discussions to review the notification under paragraph 1 or the public version of a document issued by a competent investigating authority in connection with the emergency action proceeding.

4. An emergency action shall be initiated no later than 1 year after the date the proceeding is instituted.

#### **Article 8.05: Standards for Emergency Actions**

1. A Party may not maintain an emergency action:

- (a) for a period exceeding 3 years, including any extension; or
- (b) beyond the expiration of the transition period.

2. A Party may not apply an emergency action against a good more than once.
3. On the termination of an emergency action, a Party shall set the rate of duty at the rate that would have been in effect but for the action according to the Party's Schedule to Annex 2.04 (National Treatment and Market Access for Goods – Tariff Elimination) for the staged elimination of the tariff.
4. A Party may take an emergency action under Article 8.03 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.
5. A Party taking an emergency action under Article 8.03 shall provide to the exporting Party mutually accepted trade liberalizing compensation in the form of concessions with 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 decide on compensation, the Party whose goods are subject to the action may take tariff action with trade effects substantially equivalent to the emergency action taken under Article 8.03. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects and, in any event, only while the emergency action under Article 8.03 is in effect.

#### **Article 8.06: Administration of Emergency Action Proceedings**

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

2. Each Party shall entrust determinations of serious injury, or threat thereof, in an emergency action proceeding to a competent investigating authority. Each Party shall:

- (a) ensure that those determinations are subject to review by judicial or administrative tribunals, to the extent provided by domestic law;
- (b) ensure that negative injury determinations are not modified, except through a review referred to in subparagraph (a); and
- (c) provide its competent investigating authority 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 paragraph 4.

4. A Party shall apply an emergency action only following an investigation by the Party's competent investigating authority in accordance with Articles 3 and 4.2 of the Agreement on Safeguards. To this end, Articles 3 and 4.2 of the Agreement on Safeguards are incorporated into and made part of this Agreement.