

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.