

## **CHAPTER SEVEN**

### **EMERGENCY ACTION AND TRADE REMEDIES**

#### **Section A - Emergency Action**

##### **Article 701: Article XIX of the GATT 1994 and the Agreement on Safeguards**

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 any disputes in respect thereof.
2. This Agreement does not confer any 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 such imports are not a substantial cause of serious injury or threat thereof.
3. A Party may not apply, with respect to the same good, at the same time:
  - (a) an emergency action; and
  - (b) a measure under Article XIX of the GATT 1994 and the Agreement on Safeguards.

## **Article 702: Imposition of an Emergency Action**

1. A Party may apply a measure described in paragraph 2, during the transition period only, 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 703 and 704 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

- (a) suspend the further reduction of any 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 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 base tariff rate as provided in the schedule to Annex 203.2.

### **Article 703: Notification and Consultation**

1. A Party shall, in writing, promptly notify the other Party on and request consultations<sup>1</sup> 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 paragraph 1 of Article 702; 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 a request for consultations made pursuant paragraph 1, the Parties shall enter into consultations to review the notification under paragraph 1 or any document issued in connection with the emergency action proceeding.
4. Any emergency action shall be initiated no later than one year after the date of institution of the proceeding.

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<sup>1</sup> As used in this Article, “consultations” does not mean consultations pursuant to Article 2104 (Dispute Settlement – Consultations).

## **Article 704: Standards for an Emergency Action**

1. No Party may maintain an emergency action:
  - (a) for a period exceeding three years; or
  - (b) beyond the expiration of the transition period.
  
2. No Party may apply an emergency action against a good more than twice. A Party may take a second emergency action only if the period of time that has elapsed since the end of the first action is at least half the period of application of the first action.
  
3. On the termination of any emergency action, the rate of duty shall be the rate that, according to Annex 203.2 for the staged elimination of the tariff, would have been in effect but for the action.
  
4. In order to facilitate adjustment in a situation where the expected duration of an emergency action is over one year, the Party applying a measure under Article 702 shall progressively liberalize it at regular intervals during the period of application.
  
5. A Party taking an emergency action under Article 702 shall provide to the exporting 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 goods the action is taken may take tariff action having trade effects substantially equivalent to the action taken under Article 702. 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 measure under Article 702 is being applied.

## **Article 705: Investigation Procedures and Transparency Requirements**

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 an emergency action proceeding to a competent investigating authority. Such determinations shall be 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 shall 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 paragraph 4 and 5 of this Article.
4. A Party shall apply an emergency action only following an investigation by the Party's competent authority in accordance with Articles 3, 4.2(b) and 4.2(c) of the Agreement on Safeguards. To this end, Articles 3, 4.2(b) and 4.2(c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis*.
5. In the investigation described in paragraph 3, a Party shall comply with the requirements of Article 4.2(a) of the Agreement on Safeguards. To this end, Article 4.2(a) of the Agreement on Safeguards is incorporated into and made part of this Agreement, *mutatis mutandis*.

## Section B – Antidumping and Countervailing Measures

### Article 706: Antidumping and Countervailing Measures

1. Each Party retains its rights and obligations under the WTO Agreement, which shall exclusively govern the application of antidumping and countervailing measures.

2. The WTO shall have exclusive jurisdiction in respect of the matters referred to in paragraph 1 and no provision of this Agreement, including the provisions of Chapter Twenty-One (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing measures.

### Article 707: 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; and
- (b) in the case of Peru, the Vice Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism, or its successor;

**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 any emergency action described in Article 702;

**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, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

**transition period** means the seven 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 shall be the period of the staged tariff elimination for that good.