

CHAPTER NINE

EMERGENCY ACTION

Article 9.1: Definitions

For the purposes of this Chapter:

competent investigating authority means:

- (a) for Canada, the Canadian International Trade Tribunal, or its successor;
and
- (b) for Honduras, the Directorate General for Economic Integration and Trade Policy of the Secretary of State of Industry and Trade (*Dirección General de Integración Económica y Política Comercial de la Secretaría del Estado en los Despachos de Industria y Comercio*), or its successor;

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

emergency action means an emergency action described in Article 9.3;

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

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 8 year period beginning on the date that this Agreement enters into force, unless, in the case of Honduras, the tariff elimination for the good against which the emergency 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 plus 2 years.

Article 9.2: Global Safeguard Measures

Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards.

Article 9.3: Bilateral Emergency Actions

1. A Party may, during the transition period only, adopt an emergency action described in paragraph 2 if, as a result of the reduction or elimination of a duty provided for in this Agreement, an originating good is being imported into the Party's territory in such increased quantities and under such conditions as to constitute a substantial cause of serious injury or threat of serious injury to a domestic industry.

2. If the conditions set out in paragraphs 1, and 3 through 9 are met, a Party may, to the extent necessary to remedy or prevent serious injury or threat of serious injury to a domestic industry:

- (a) suspend the further reduction of a rate of duty provided for under this Agreement on the good;
- (b) increase the rate of duty on the good to a level not exceeding the lesser of:
 - (i) the most-favoured-nation (MFN) applied rate of duty in effect at the time the emergency 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 exceeding 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.

- 3. A Party shall, in writing and without delay, notify the other Party and request discussions regarding the institution of a proceeding that could result in the application of an emergency action against an originating good.

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

- 5. A Party may not maintain an emergency action:
 - (a) for a period exceeding 3 years; or
 - (b) beyond the expiration of the transition period, unless the Party whose good is subject to the emergency action consents.

- 6. During the transition period, a Party may not apply an emergency action to the same good more than twice.

- 7. On the termination of a first emergency action, the rate of duty shall not exceed the rate that, according to the Party's Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for the staged elimination of the tariff, would have been in effect 1 year after the adoption of the action. Beginning on January 1 of the year after the termination of the action, the Party that has taken the action shall:
 - (a) set the rate of duty at the rate that would have been in effect, but for the emergency action, according to its Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for the staged elimination of the tariff; or
 - (b) eliminate the tariff in equal annual stages ending on the date determined by Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for the elimination of the tariff.

8. A Party may apply a second emergency action to the same good provided that:
- (a) a period of time has elapsed since the termination of the first emergency action equal to at least one half the initial period of application;
 - (b) the rate of duty for the first year of the second emergency action is not greater than the rate that would have been in effect under the Party's Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) at the time the first action was adopted; and
 - (c) the rate of duty applicable to any subsequent year shall be reduced in equal increments such that the rate of duty in the final year of the emergency action is equal to the rate provided for in that Party's Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for that year.
9. A Party may adopt a bilateral emergency action after the expiration of the transition period only with the consent of the other Party.
10. A Party that applies an emergency action under this Article shall provide to the other Party mutually accepted trade liberalizing compensation in the form of concessions with substantially equivalent trade effects or with a value 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 against whose good the action is taken may take tariff action with trade effects substantially equivalent to the emergency action taken under this Article. The Party taking the tariff action shall apply the action only for the period necessary to achieve the substantially equivalent effects.

Article 9.4: 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:
 - (a) entrust a determination of serious injury, or threat of serious injury, in an emergency action proceeding to a competent investigating authority empowered under domestic law to conduct proceedings;
 - (b) ensure that these determinations are subject to review by judicial or administrative tribunals, to the extent provided by domestic law;
 - (c) ensure that negative injury determinations are not subject to modification, except through a review referred to in subparagraph (b).
3. Each Party should provide its competent investigating authority with the resources necessary to enable it to fulfill its duties.
4. 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 9.4.

Article 9.5: Relation to Textile and Apparel Annex

This Chapter does not apply to an emergency action taken under Annex 3.1 (National Treatment and Market Access for Goods – Textile and Apparel Goods).

Annex 9.4

Administration of Emergency Action Proceedings

Institution of a Proceeding

1. A person specified in domestic law may, by a petition or complaint, request the competent investigating authority to institute an emergency action proceeding. The person filing the petition or complaint shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the originating good.
2. A Party may institute a proceeding on its own initiative or request the competent investigating authority to conduct a proceeding.
3. Except as provided in this Annex, the time periods applicable to the proceeding are established by the domestic law of the Party.

Contents of a Petition or Complaint

4. If the basis for an investigation is a petition or complaint, the petitioning person shall, in their petition or complaint, provide the following information if it is publicly available, or a best estimate and the basis for that estimate, if the information is not publicly available:
 - (a) product description: the name and description of the originating good, 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;
 - (b) representativeness:
 - (i) the name and address of the person filing the petition or complaint, and the location of the establishment in which that person produces the domestic good,

- (ii) the percentage of domestic production of the like or directly competitive good that the person accounts for and the basis for claiming that the person is representative of an industry, and
 - (iii) the name and location 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 forming the basis of the claim that the originating good 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 domestic 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 serious injury or threat of serious injury, and a summary of the basis for the assertion, supported by relevant data, that increased imports of the originating good, either actual or relative to domestic production, are causing or threatening to cause serious injury; and
- (g) contribution of originating good to injury: quantitative and objective data indicating the share of imports accounted for by the originating good and the petitioner's views on the extent to which those imports are substantially contributing to the serious injury or threat of serious injury caused by imports of the good.

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

Notification Requirement

6. When an emergency action proceeding is instituted, the competent investigating authority shall publish a notice of the institution of the proceeding in the official journal of the Party within a period of 30 days. The notice shall identify the following:

- (a) the petitioning person or other requester;
- (b) the originating good that is the subject of the proceeding and its tariff subheading;
- (c) the nature and timing of the determination to be made;
- (d) the deadlines for filing briefs, statements, and other documents;
- (e) the place at which the petition and other documents filed in the course of the proceeding may be inspected; and
- (f) 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, the competent investigating authority may not publish the notice required by paragraph 6 without first carefully assessing whether the petition or complaint meets the requirements of paragraph 4, including representativeness.

Public Hearing

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

- (a) provide reasonable notice of a public hearing, including the time and place of the hearing;

- (b) hold a public hearing allowing an interested person and any association representing the interests of consumers in the territory of the Party instituting the proceeding to:
 - (i) appear in person or by counsel,
 - (ii) present evidence,
 - (iii) be heard on the questions of serious injury, or threat of serious injury, and the appropriate remedy, and
 - (iv) cross-question an interested person or consumer association making a presentation 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 submitted in the course of a proceeding. The competent investigating authority shall require interested persons and consumer associations that provide confidential information to furnish a non-confidential summary, in writing, of that confidential information or indicate the reasons why they are unable to provide that summary.

Evidence of Injury and Causation

10. The competent investigating authority, while conducting its proceeding, 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 the domestic industry, including the rate and amount of the increase in imports of the originating good; the share of the domestic market taken by those 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 price and inventory, and the ability of firms in the industry to generate capital.

11. The competent investigating authority may 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 originating good and serious injury or threat of serious injury. If factors other than increased imports of the originating good are causing injury to the domestic industry at the same time, this injury may not be attributed to those 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 interested persons and consumer associations to prepare and submit their views.

13. The competent investigating authority shall promptly publish a report, including a summary of that report in the official journal of the Party, setting out its findings and reasoned conclusions on relevant issues of law and fact. The report shall describe the originating 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;
- (b) information supporting a finding that imports of the originating good are increasing, the domestic industry is seriously injured or threatened with serious injury, and the increasing imports are causing or threatening serious injury; and
- (c) if provided for by domestic law, a finding or recommendation regarding the appropriate remedy and the basis for that remedy.

14. In its report, the competent investigating authority may not disclose confidential information.