

## CHAPTER FOUR

### TEXTILES AND APPAREL

#### ARTICLE 4.1: BILATERAL EMERGENCY ACTIONS

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, a textile or apparel good benefiting from preferential treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action, consisting of an increase in the rate of customs duty on the good to a level not to exceed the lesser of:
  - (a) the most-favoured-nation (MFN) applied rate of duty in effect at the time the action is taken; and
  - (b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.
2. In determining serious damage, or actual threat thereof, the importing Party:
  - (a) shall examine the effect of increased imports from the exporting Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and
  - (b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.
3. The importing Party may take an emergency action under this Article only following an investigation by its competent authorities.
4. In the event that the importing Party decides to take an emergency action under this Article, the importing Party shall deliver to the exporting Party, without delay, written notice of its decision, and, on the request of the exporting Party, shall consult with that Party.
5. In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take emergency action under this Article on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports from the exporting Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports are causing serious damage, or actual threat thereof, to a domestic industry producing a like or

directly competitive good. The duration of such a provisional measure shall not exceed 200 days, during which time an investigation by its competent authorities shall be undertaken. Any additional customs duty paid as a result of a provisional measure shall be promptly refunded if the investigation does not result in a finding of serious damage or actual threat thereof consistent with paragraph 1. The duration of any provisional measure shall be counted as part of the period described in paragraph 6(a).

6. The following conditions and limitations shall apply to any emergency action taken under this Article:

- (a) no emergency action against a good may be maintained for a period exceeding two years, except that the period may be extended by up to two years if the competent authorities of the importing Party determine, in conformity with the procedures set out in this Article, that:
  - (i) the emergency action continues to be necessary to prevent or remedy serious damage and to facilitate adjustment by the domestic industry, and
  - (ii) there is evidence that the industry is adjusting;
- (b) no emergency action against a good may be taken or maintained beyond the period ending ten years after customs duties on that good have been eliminated pursuant to this Agreement;
- (c) no emergency action may be taken by an importing Party against any particular good of the exporting Party more than once; and
- (d) on termination of the emergency action, the rate of customs duty shall be the rate that would have been in effect but for the emergency action.

7. The importing Party 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 customs duties expected to result from the emergency action. Such concessions shall be limited to textile or apparel goods, unless the Parties otherwise agree. If the Parties are unable to agree on compensation, the exporting Party may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. The exporting Party may take such tariff action against any goods of the importing Party. The exporting Party shall apply the tariff action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

8. (a) Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement, and the Agreement on Textiles and Clothing.
- (b) Neither Party may apply, with respect to the same good at the same time, an emergency action under this Article and:
  - (i) a safeguard measure under Chapter Nine (Safeguards); or
  - (ii) a measure under Article XIX of GATT 1994 and the Safeguards Agreement, or the Agreement on Textiles and Clothing.

#### ARTICLE 4.2: RULES OF ORIGIN AND RELATED MATTERS

##### *Rules of Origin*

1. This Chapter, including its Annexes, and Chapter Five (Rules of Origin) shall apply with respect to determining whether a textile or apparel good is an originating good.
2. For greater clarity, the rules of origin set forth in this Agreement shall not apply in determining the country of origin of a textile or apparel good for non-preferential purposes.

##### *Consultations*

3. On the request of either Party, the Parties shall consult to consider whether the rule of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibres, yarns, or fabrics in the territories of the Parties.
4. In the consultations referred to in paragraph 3, each Party shall consider all data presented by the other Party showing substantial production in its territory of the particular good. The Parties shall consider that substantial production has been shown if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner.
5. The Parties shall endeavour to conclude consultations within 60 days of a request. An agreement between the Parties resulting from the consultations on revising a rule of origin for a good shall supersede any prior rule of origin for such good when approved by the Parties in accordance with Article 23.3 (Amendments).

##### *De Minimis*

6. A textile or apparel good that is not an originating good because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A, shall nonetheless be considered to be an originating good if the total weight of all such fibres or yarns in that

component is not more than seven percent of the total weight of that component.<sup>4-1</sup>

7. Notwithstanding paragraph 6, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

#### *Treatment of Sets*

8. Notwithstanding the textile and apparel specific rules of origin set out in Annex 4-A, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the customs value of the set.

#### ARTICLE 4.3: CUSTOMS COOPERATION

1. The Parties shall cooperate for the purposes of:

- (a) enforcing or assisting in the enforcement of their measures affecting trade in textile or apparel goods;
- (b) ensuring the accuracy of claims of origin;
- (c) enforcing or assisting in the enforcement of measures implementing international agreements affecting trade in textile or apparel goods; and
- (d) preventing circumvention of international agreements affecting trade in textile or apparel goods.

2. On the request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the importing Party to determine that a claim of origin for a textile or apparel good is accurate. The exporting Party shall conduct such a verification, regardless of whether an importer claims preferential treatment for the good. The exporting Party may also conduct such a verification on its own initiative.

3. Where the importing Party has a reasonable suspicion that an exporter or producer of the exporting Party is engaging in unlawful activity relating to trade in textile or apparel goods, the exporting Party shall, on the request of the importing Party, conduct a verification for purposes of enabling the importing Party to determine that the exporter or producer is complying with applicable customs measures affecting trade in textile or apparel goods, including measures that the exporting Party adopts and maintains pursuant to this Agreement and measures of either Party implementing other international agreements affecting trade in textile or

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<sup>4-1</sup>For greater certainty, when the good is a fibre, yarn, or fabric, the “component of the good that determines the tariff classification of the good” is all of the fibres in the yarn, fabric, or group of fibres

apparel goods, and to determine that a claim of origin for a textile or apparel good exported or produced by that person is accurate. For the purposes of this paragraph, a reasonable suspicion of unlawful activity shall be based on relevant factual information of the type set forth in Article 6.5 (Cooperation) or factors that indicate:

- (a) circumvention by the exporter or producer of applicable customs measures affecting trade in textile or apparel goods, including measures adopted to implement this Agreement; or
- (b) the existence of conduct that would facilitate the violation of measures relating to other international agreements affecting trade in textile or apparel goods.

4. The exporting Party, through its competent authorities, shall permit the importing Party, through its competent authorities, to assist in a verification conducted in response to a request under paragraph 2 or 3, including by conducting, along with the competent authorities of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any person involved in the movement of a textile or apparel good from the territory of the exporting Party to the territory of the importing Party. If an exporter, producer, or other person refuses to consent to a visit by the competent authorities of the importing Party, and if the importing Party is unable to make the determination described in paragraph 2 or 3 within 12 months after its request for a verification, the importing Party may take appropriate action as described in paragraph 8.

5. In conducting a verification pursuant to paragraph 2 or 3, the exporting Party shall coordinate its activities with the importing Party and shall conclude the verification and report the results to the importing Party within a mutually agreed time. The report shall include all documents and facts supporting any conclusion that the exporting Party reaches. If the Parties cannot agree on a time for concluding the verification and providing a report or if the exporting Party does not conclude the verification and report the results to the importing Party within the agreed time, the importing Party may take appropriate action under paragraph 8.

6. Each Party shall provide to the other Party, consistent with its law, production, trade, and transit documents and other information necessary to conduct verifications under paragraphs 2 and 3. Any documents or information exchanged between the Parties in the course of such a verification shall be treated in accordance with Article 22.4.2 (Disclosure of Information).

7. While a verification is being conducted, the importing Party may, consistent with its law, take appropriate action, which may include suspending the application of preferential treatment, to:

- (a) the textile or apparel good for which a claim of origin has been made, in the case of a verification under paragraph 2; or

- (b) any textile or apparel goods exported or produced by the person subject to a verification under paragraph 3, where the reasonable suspicion of unlawful activity relates to those goods.
8. (a) If the importing Party is unable to make the determination described in paragraph 2 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its laws, regulations, and procedures, take appropriate action, including denying preferential treatment to the textile or apparel good subject to the verification and to similar goods exported or produced by the person that exported or produced the good.
- (b) If the importing Party is unable to make one of the determinations described in paragraph 3 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its laws, regulations, and procedures, take appropriate action, including deny preferential treatment to any textile or apparel good exported or produced by the person subject to the verification.
9. (a) The importing Party may deny preferential treatment or entry under paragraph 8 only after providing a written determination to the importer of the reason for the denial.
- (b) If the importing Party takes action under paragraph 8 because it is unable to make the determination described in paragraph 2 or 3, as the case may be, it may continue to take appropriate action under paragraph 8 until it receives information sufficient to enable it to make that determination.
10. On the request of either Party, the Parties shall consult to resolve any technical or interpretive difficulties that may arise under this Article or to discuss ways to improve the effectiveness of their cooperative efforts. In addition, either Party may request technical or other assistance from the other Party in implementing this Article. The Party receiving such a request shall make every effort to respond favourably and promptly to it.

#### ARTICLE 4.4: DEFINITIONS

For the purposes of this Chapter:

1. **claim of origin** means a claim that a textile or apparel good is an originating good or a good of a Party;
2. **exporting Party** means the Party from whose territory a textile or apparel good is exported; and
3. **importing Party** means the Party into whose territory a textile or apparel good is imported.