

CHAPTER FOUR

TEXTILES AND APPAREL

ARTICLE 4.1: BILATERAL EMERGENCY ACTIONS

1. If, as a result of the reduction or elimination of a duty under this Agreement, a textile or apparel good benefiting from preferential tariff 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 by the domestic industry:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of
 - (i) the most-favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and
 - (ii) the MFN applied rate of duty on the good in effect on the date this Agreement enters into force.

2. In determining serious damage, or actual threat thereof, the importing Party:

- (a) shall examine the effect of increased imports of the good 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. The importing Party shall:

- (a) carry out any investigation under this Article in accordance with procedures it has established; and
- (b) transmit its procedures to the other Party on the date this Agreement enters into force or before it initiates an investigation under this Article.

4. The importing Party shall deliver to the exporting Party, without delay, written notice of its intent to take emergency action and, on the request of the exporting Party, shall enter into consultations with that Party regarding the matter.

5. An importing Party:

- (a) may not maintain an emergency action for a period exceeding two years except that the period may be extended by up to two years;
- (b) may not take or maintain an emergency action against a good beyond ten years after the date the Party must eliminate its customs duties on that good pursuant to this Agreement;
- (c) may not take an emergency action more than once against the same good of the other Party; and
- (d) shall, on termination of the emergency action, apply to the good that was subject to the emergency action the rate of customs duty that would have been in effect but for the action.

6. The Party taking an emergency action under this Article 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 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 within 30 days of the application of an emergency action, the Party against whose good the emergency action is taken may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. The tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action 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 on the date the emergency action terminates.

7. Neither Party may take or maintain, with respect to the same good at the same time, an emergency action under this Article and:

- (a) a safeguard measure under Chapter Ten (Trade Remedies); or
- (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

ARTICLE 4.2: RULES OF ORIGIN AND RELATED MATTERS

Application of Chapter Six

1. Except as provided in this Chapter, including Annexes 4-A and 4-B, Chapter Six (Rules of Origin and Origin Procedures) applies to textile or apparel goods.

2. 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 rules of origin applicable to a particular textile or apparel good should be revised to address

issues of availability of supply of fibers, 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 that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner.

5. The Parties shall endeavor to conclude consultations within 60 days after delivery of a request under paragraph 3. If the Parties agree in the consultations to revise a rule of origin, the revision shall supersede any prior rule of origin for such good when approved by the Parties in accordance with Article 24.2 (Amendments).

Transitional Procedures for Goods Containing Fibers, Yarns, and Fabrics Not Available in Commercial Quantities

6. Annex 4-B sets out provisions applicable to certain goods containing fibers, yarns, or fabrics that are not available in commercial quantities in a timely manner in a Party's territory.

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7. A textile or apparel good that is not an originating good because certain fibers 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 fibers or yarns in that component is not more than seven percent of the total weight of that component. Notwithstanding the preceding sentence, 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 and finished in the territory of a Party.¹

Treatment of Sets

8. Notwithstanding the specific rules of origin set out in Annex 4-A, textile or apparel goods classifiable under General Rule of Interpretation 3 of the Harmonized System as goods put up in sets for retail sale 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 FOR TEXTILE OR APPAREL GOODS

1. The Parties shall cooperate for purposes of:

- (a) enforcing or assisting in the enforcement of their respective measures affecting trade in textile or apparel goods;

¹ For purposes of paragraph 7, **wholly formed and finished** means all production processes and finishing operations, beginning with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

- (b) verifying and 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. (a) Except as provided in subparagraphs (b) and (c), Korea shall obtain and update annually, through its competent authority,² the following information concerning each person engaged in the production of textile or apparel goods in its territory:
- (i) the name and address of the person, including the location of all textile or apparel facilities owned or operated by that person in the territory of Korea;
 - (ii) the telephone number, facsimile number, and e-mail address of the person;
 - (iii) in the case of an enterprise, the names and nationalities of the owners, directors, and corporate officers, and their positions within the enterprise;
 - (iv) the number of employees the person employs and their occupations;
 - (v) a general description of the textile or apparel goods the person produces and the person's production capacity;
 - (vi) the number and type of machines the person uses to produce textile or apparel goods;
 - (vii) the approximate number of hours the machines operate per week;
 - (viii) the identity of any supplier to that person of textile or apparel goods, or fabrics, yarns, or fibers used in the production of those goods; and
 - (ix) the name of, and contact information for, each of the person's customers in the United States.

Korea shall provide this information to the United States annually, beginning within one year of the date this Agreement enters into force.

- (b) Korea shall not be required to obtain and provide to the United States the information specified in subparagraph (a) with respect to any person that is engaged solely in the production of:
 - (i) textile or apparel goods, or fibers, yarns, or fabrics used in the

² For purposes of paragraph 2, Korea's competent authority is the Ministry of Commerce, Industry and Energy or its successor.

production of those goods, that are not exported to the United States;
or

- (ii) with respect to goods classified under HS Chapter 61 or 62 that are exported to the United States, goods not used in the component that determines the tariff classification of the good, other than fabric used as visible lining material that satisfies the requirements of
 - (A) Chapter Rule 1 for Chapter 61 of Annex 4-A, in the case of a good classified under HS Chapter 61; or
 - (B) Chapter Rule 1 for Chapter 62 of Annex 4-A, in the case of a good classified under HS Chapter 62.
- (c) Korea shall not be required to obtain and provide to the United States the information specified in subparagraph (a)(vii) through (ix) with respect to any small- or medium-sized enterprise that does not contract directly for the sale of its goods with an importer in the United States.³
- (d) Korea may obtain the information required under subparagraph (a) from a representative industry association, provided that Korea takes appropriate steps to verify the accuracy of the information.
- (e) Article 7.6 (Confidentiality) shall apply to any information provided in accordance with this paragraph that Korea designates as confidential.

3. 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 tariff treatment for the good. The exporting Party also may conduct such a verification on its own initiative.

4. On the request of a Party, the other Party shall endeavor to examine transshipped textile or apparel goods.⁴

5. Where the importing Party has a reasonable suspicion that a person of the exporting Party is engaging in unlawful activity relating to trade in textile or apparel goods, the exporting Party shall conduct, on the request of the importing Party, a verification for purposes of enabling the importing Party to determine that the person 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 any other international agreement regarding trade in textile or apparel goods, or to determine that a claim of origin regarding a textile or apparel good exported or produced by that person is accurate. For purposes of this paragraph,

³ With respect to any small- or medium-sized enterprise, Korea may obtain the information required under subparagraph (a)(i) through (vi) from the producer of the end product in which the production of the small- or medium-sized enterprise is used.

⁴ Paragraph 4 does not require the exporting Party to take any action with regard to transshipped textile or apparel goods that are not subject to a claim of origin, and that do not undergo processing or manipulation in its territory, other than to share information about those goods with the importing Party.

reasonable suspicion means a suspicion based on relevant factual information of the type set forth in Article 7.5 (Cooperation) or factors that indicate:

- (a) circumvention by an enterprise 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 or that would otherwise facilitate the nullification or impairment of rights or benefits accruing to a Party under those agreements.

6. The exporting Party, through its competent authorities, shall permit the importing Party, through its competent authorities, to assist in a verification conducted pursuant to paragraph 3 or 5, 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 other person that may have evidence that is relevant to the verification. Any such visit should occur without providing prior notification to the exporter, producer, or other person.⁵ The exporting Party shall seek permission to conduct the site visit from the person at the time of the visit. If an exporter, producer, or other person refuses to consent to a visit by the appropriate officials of the importing Party, the importing Party may consider that the verification cannot be completed and the determination described in paragraph 3 or 5 cannot be made and may take appropriate action as described in paragraph 10.

7. Each Party shall provide to the other Party, consistent with its law, production, trade, and transit documents, and other information necessary to conduct a verification under paragraph 3 or 5. Each Party shall consider any documents or information exchanged between the Parties in the course of such a verification to have been designated as confidential within the meaning of Article 7.6 (Confidentiality). Notwithstanding the preceding sentence and Article 7.6, a governmental entity of a Party may share information provided to it under this Article with other governmental entities of that Party for a purpose set forth in paragraph 1.

8. 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 tariff 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 3; or
- (b) any textile or apparel goods exported or produced by the person subject to a verification under paragraph 5, where the suspicion of unlawful activity relates to those goods.⁶

⁵ In carrying out paragraph 6, Korea shall presume, due to the risk that the person would destroy or alter relevant evidence, that the purpose of the verification would not be achieved if its officials provided prior notice to the person.

⁶ For greater certainty, nothing in paragraph 8 shall be construed to preclude the release of goods in accordance with Article 7.2 (Release of Goods).

9. The Party conducting a verification under paragraph 3 or 5 shall provide the other Party with a written report on the results of the verification, which shall include all documents and facts supporting any conclusion that the Party reaches. Article 7.6 (Confidentiality) shall apply to any information contained in the report that the Party providing the report designates as confidential.

10. (a) If the importing Party is unable to make the determination described in paragraph 3 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action, including denying preferential tariff 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 5 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action, including denying preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification.

11. Before taking any action under paragraph 10, the importing Party shall notify the exporting Party. The importing Party may continue to take action under paragraph 10 until it receives information sufficient to enable it to make the determination described in paragraph 3 or 5, as the case may be. A Party may, consistent with its law, make public the identity of a person that the Party has determined to be engaged in circumvention as provided under this Article or that has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

12. 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 a request under this paragraph shall make every effort to respond favorably and promptly to it.

13. Any request for cooperation under this Article shall be made in writing and shall include a brief statement of the matter at issue and the cooperation requested.

ARTICLE 4.4: COMMITTEE ON TEXTILE AND APPAREL TRADE MATTERS

The Parties hereby establish a Committee on Textile and Apparel Trade Matters comprising representatives of each Party. The Committee shall meet on the request of either Party or the Joint Committee to consider any matter arising under this Chapter.

ARTICLE 4.5: DEFINITIONS

For purposes of this Chapter:

Agreement on Textiles and Clothing means the *Agreement on Textiles and Clothing*, contained in Annex 1A to the WTO Agreement;

claim of origin means a claim that a textile or apparel good is an originating good or a good

of a Party;

exporting Party means the Party from whose territory a textile or apparel good is exported;

importing Party means the Party into whose territory a textile or apparel good is imported;

small- or medium-sized enterprise means an enterprise that employs fewer than 50 employees;

textile or apparel good means a good listed in the Annex to the Agreement on Textiles and Clothing; and

transshipped means the removal of a good from the conveyance on which it was brought into the territory of a Party and the placement of the good on the same or another conveyance for the purpose of taking it out of the territory of the Party.