

Chapter 11: Emergency Action

Article 1101: Bilateral Actions

1101.2(d) provides that on termination of a bilateral safeguard action, the rate of duty shall be the rate which would have been in effect but for the emergency action.

1101.2 (b) and 1101.3 provide that actions may be taken after the transition period or may extend beyond the transition period only with the consent of the other Party.

Chapter 12: Exceptions for Trade In Goods

Article 1203 (c): Miscellaneous Exceptions (Fish)

The Elements of the Agreement provided for initiatives (elimination, phase-out, grandfathering) for an illustrative list of quantitative restrictions.

Article 1203 (c) elaborates on the list by grandfathering existing east coast provincial acts, some of which have been used to control the movement of unprocessed fish. They include the relevant provincial legislation in Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland. With respect to restrictions on British Columbian exports of unprocessed fish, the two governments are pursuing at this time their rights and obligations under GATT in light of the recent panel finding.

Article 1204: Beer and Malt Containing Beverages

Beer was not dealt with in the Elements of the Agreement in a separate fashion. In the Wine and Distilled Spirits chapter, it was specifically stated that it did not apply to beer.

The treatment of beer is now explicitly laid out in the text under chapter 12 exceptions. Article 1204 applying to beer and malt-containing beverages makes it explicit that national treatment as spelled out in Chapter 5 does not apply to existing measures for beer and malt-containing beverages (beer, coolers).

Article 1204 grandfathers all existing practices concerning beer. The effect of this article is that existing practices cannot be challenged under the FTA. For future practices, beer will have access to the full range of dispute settlement protection of the FTA. (The U.S. has not, however, relinquished its GATT rights with respect to existing practices respecting beer).