

WORLD TRADE ORGANIZATION

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Committee on Safeguards

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NOTIFICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROCEDURES RELATING TO SAFEGUARD MEASURES

THAILAND

The following communication, dated 24 August 2009, is being circulated at the request of the Delegation of Thailand.

In accordance with Article 12.6 of the Agreement on Safeguards and the relevant decision of the Committee on Safeguards in document G/SG/N/1, Thailand hereby notifies its laws and regulations pertaining to the Agreement on Safeguards. As such, please find attached an unofficial translation of The Safeguard Measures on Increased Imports Act B.E. 2550 (2007).¹

¹ B.E. stands for Buddhist Era. There is a difference of 543 years between a B.E. year and an A.D. or C.E. (*Anno Domini* ("Year of the Lord") or Christian Era) year; hence, as noted in parentheses, B.E. 2550 is the equivalent of A.D. or C.E. 2007.

(Unofficial translation)

**The Safeguard Measures on Increased Imports Act
B.E. 2550 (2007)**

BHUMIBOL ADULYADEJ REX

Given on the 29th day of December B.E. 2550 (2007),
Being the 62nd year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to enact a law regarding the safeguard measures on increased imports,

This Act contains certain provisions relating the restriction of the rights and liberty of individuals which Section 29 and Section 43 of the Constitution of the Kingdom of Thailand so permit by virtue of the provisions of law.

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly, as follows:

Section 1 This Act shall be called "The Safeguard Measures on Increased Imports Act B.E. 2550 (2007)".

Section 2 This Act shall come into force after ninety days of its publication in the Royal Gazette.

Section 3 In this Act

"Safeguard measures" means the measures applied to prevent and remedy injury caused by the increased imports.

"Increased imports" means the imports of any type of products into the kingdom in such increased quantities, either absolute or relative to domestic production.

"Injury" means

(1) Serious injury to a domestic industry that is a significant overall impairment in the position of a domestic industry, or

(2) Threat of serious injury that is clearly imminent to the domestic industry.

"Domestic industry" means the producers who produce the like products within the territory or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

"Like products" means products which are identical or highly similar features to the increased import products as well as the directly competitive products of the increased imports.

"Interested parties" means

(1) Overseas producers or exporters of the increased import products, importers of the increased import products, trade associations whose majority members are the producers, exporters, or importers of the increased import products as a case maybe.

(2) Governments of the exporting countries of the increased import products.

(3) Local producers of the like products or trade associations whose majority members are the producers of such products.

(4) Other parties as specified in the notification issued by the Minister of Commerce.

"Developing country" means the country whose name is specified on the United Nations' list of developing countries.

"The Committee" means the committee established to determine the safeguard measures.

Section 4 The Minister of Commerce and the Minister of Finance shall be responsible in accordance to this Act and is herewith authorized to issue ministerial regulations and notifications to maintain compliance with this Act.

Such ministerial regulations and notifications shall come into force upon their publication in the Royal Gazette.

Chapter 1

The Committee

Section 5 There shall be a committee called "The Committee on Safeguard Measures" comprised of the Minister of Commerce who serves as The Chairman, the Permanent Secretary of the Ministry of Commerce and a representative from the Ministry of Finance, a representative from the Ministry of Foreign Affairs, a representative from the Ministry of Agriculture and Cooperatives, a representative from the Ministry of Industry, a representative from the Ministry of Labour, and a representative from the Office of the Consumer Protection Board and seven experts appointed by the Cabinet of Ministers as the Committee members. The Director-General of the Department of Foreign Trade shall be a Committee member and serve as the secretary of the Committee.

The Director-General of the Department of Foreign Trade shall appoint official(s) of the Department of Foreign Trade as the Committee's assistant secretary.

In the light of appointing the Committee's expert members pursuant to the first paragraph, each member shall be an expert in the specific field of international trade, international economics, accounting and finance/fiscal, international trade laws, agriculture, industry and business administration.

Section 6 The Committee shall have the following powers and functions:

- (1) Determine the safeguard measures under this Act.
- (2) Determine the compensations under Section 39.
- (3) Advise on the issuance of the ministerial regulations and notifications for the implementation of this Act.
- (4) Appoint the sub-committees.
- (5) Exercise any other functions as stipulated in this Act or as assigned by the Cabinet.

Section 7 The Committee's expert members shall be appointed for a term of three years and may be re-appointed, but shall not remain in office more than two consecutive terms.

Upon completion of their terms pursuant to the first paragraph, the Committee's expert members shall remain in their offices until the newly appointed members assume their offices.

Section 8 Aside from leaving the position at the end of their terms, the Committee's expert members shall vacate the office upon:

- (1) Death.
- (2) Resignation.
- (3) Being removed from office by the Cabinet on the ground of flawed conducts, negligence, dishonesty or incapability.
- (4) Becoming bankrupt.
- (5) Becoming incompetent or quasi-incompetent.
- (6) Being sentenced to an imprisonment term by a court's final judgment regardless of the imprisonment term deferment, except when such imprisonment is deferred for reason of a negligent or petty offence or a defamation offence.

Section 9 When a Committee's expert member vacates the office before the term ends, a replacement must be promptly appointed, unless the remaining period of the term is less than ninety days, in which case a replacement may be left vacant.

The Committee's expert member who is appointed as a replacement pursuant to the first paragraph shall hold the office for the remaining period of the replaced member's term.

Section 10 A meeting of the Committee shall require a quorum of not less than one half of the total number of the Committee members. If the chairman is not present at any meeting or is not able to perform the duty, the present members shall select one among themselves to act as the chairman of that meeting.

The final decision of a meeting shall be reached by a majority of votes. Each member shall have one vote, In the event of a tie vote, the chairman of the meeting shall have the casting vote.

A Committee member who holds interest to an agenda shall refrain from attending the meeting of such agenda.

Any conflicting opinions in the meeting and their reasons shall be noted in the minute of the meeting. A Committee member may request that his or her conflicting opinions be included in the meeting's determination as well.

Section 11 In consideration of its functions, the Sub-committee shall have the power to perform any operation as assigned by the Committee.

Section 12 Section 10 shall be applied to the Sub-committee's meeting *mutatis mutandis*.

Chapter 2

Determination of Safeguard Measures

Part 1

Initiation of the Determination Process

Section 13 Producers of the like products under the production criteria stipulated by the Ministry of Commerce's notifications or producers of the like products under support from other producers of the like products whose collective output meets the criteria stipulated by the Ministry of Commerce's notifications shall have the rights to petition the Committee to determine safeguard measure application if increased imports and injury to the domestic industry have been perceived. The petition shall be submitted to the Department of Foreign Trade with evidence and information on the increased imports and injury to the domestic industry.

Submission of the petition pursuant to the first paragraph shall be in accordance with the criteria, procedures, and conditions stipulated in the Ministry of Commerce's notifications.

Where the Department of Foreign Trade deems the petition comprises of complete and correct information and evidence, the Department of Foreign Trade shall submit the petition to the Committee for determination.

Section 14 Where the Department of Foreign Trade deems evidence of the increased imports and injury to the domestic industry is valid, the Department of Foreign Trade shall submit a petition to the Committee for determination.

Section 15 Upon the determination of the submitted petition pursuant to Section 13 or Section 14, if the Committee found the increased imports and injury to the domestic industry, the Department of Foreign Trade shall carry out the investigation without delay.

If upon determination, the Committee finds no evidence of increased imports or injury to the domestic industry, the Department of Foreign Trade shall notify the Committee's determination to the petitioner without delay.

Part 2

Injuries

Section 16 In determining whether increased imports have caused injury to the domestic industry, all relevant factors shall be taken into consideration including, *inter alia*, the following factors:

- (1) The rate and amount of the increased imports
- (2) The share of the domestic market taken by the increased imports
- (3) Changes in the level of sales
- (4) Changes in the level of production
- (5) Changes in the level of productivity
- (6) Changes in the level of capacity utilization
- (7) Changes in the level of profits and losses
- (8) Changes in the level of employment

In determination of the injury pursuant to the first paragraph, the evidence should clearly demonstrate that the injury is caused by the increased imports. When the factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports.

The determination of injury pursuant to the first paragraph shall be in accordance with the criteria, procedures, and conditions stipulated by the ministerial regulations.

Section 17 In determination of threat of serious injury to the domestic industry, the factors laid down in the first paragraph of Section 16 shall, *inter alia*, be taken into account. Such determination shall be based on facts rather than on accusations, speculations, any other conjectures or remote possibilities.

Part 3 Investigation

Section 18 In determining the safeguard measures, the Department of Foreign Trade shall have the authority to examine the increased imports and the injury thereof. The investigation shall begin with a notification of the said investigation in an official journal or any other appropriate means for public information.

The Department of Foreign Trade shall notify the initiation of the investigation to the petitioners and the interested parties.

Criteria for the investigation notification pursuant to the first paragraph shall be in accordance with the notifications by the Department of Foreign Trade and shall include, *inter alia*, the following details:

- (1) Imports of the product under consideration,
- (2) Date of initiation, and
- (3) Preliminary information on the increased imports and the injury thereof.

Section 19 During the course of the investigation, the Department of Foreign Trade shall provide the opportunity for the importers, exporters, and other interested parties to present their supporting evidences, documents, and opinions on the petition as to, *inter alia*, whether or not the application of a safeguard measure would be in the public interest.

The submission of evidence and document pursuant to the first paragraph shall be in accordance with the criteria, procedures, and conditions stipulated in by the notifications of the Ministry of Commerce.

Section 20 Upon completion of the investigation into the increased imports and injury, the Department of Foreign Trade shall summarize the findings and submit its opinions to the Committee for determination.

Section 21 Any information, which is by nature confidential or which is provided on a confidential basis, shall be treated as confidential unless otherwise approved by the provider. In such case the Department of Foreign Trade may request the provider of the information to provide a brief non-confidential summary of the information. If the provider of the information is unable to do so, the reasons for such failure shall be provided.

In the case where the Department of Foreign Trade deems a request to keep the information confidential to have insufficient ground, and that the information provider refuses to have such

information revealed or publicized, either in generalized or summarized form, the Department of Foreign Trade may disregard such information unless it can be verified to its satisfaction.

Part 4

Determination of Provisional Safeguard Measures

Section 22 Where the Department of Foreign Trade has considered the preliminary information and found that the increased import has caused injury to the domestic industry or that the injury is imminent to such an extent that any delay would cause damage which would be difficult to repair, the Department shall submit the case to the Committee for determination on provisional safeguard measures.

Section 23 If the Committee deems it is necessary to impose provisional safeguard measures, the Committee shall issue a notification imposing provisional tariff rates as the Committee deems appropriate.

The provisional tariff to be imposed pursuant to the first paragraph shall be considered as an additional import tariff to the regular tariff stipulated by the tariff schedules or by the notifications issued by virtue of the existing tariff laws at the time of such import. The provisions of the Customs Law and the Tariff Schedule Law shall apply to the provisional tariff in the same way as the general import tariff governed by such laws. The Customs Department shall collect and secure the collected provisional tariff for implementation under Section 24 until the cause for such implementation is terminated.

The provisional tariff shall be imposed for a period not exceeding 200 days from the day after the notification on such tariff is published in the Royal Gazette.

Part 5

Termination of Safeguard Measures Determination

Section 24 Where the Committee has reached the final determination that neither increased imports nor injuries are in existence, the determination on the safeguard measures shall be terminated. The Department of Foreign Trade shall notify the petitioner and the final decision shall be publicized.

In case the provisional tariffs under Section 23 have been collected, such tariffs shall be refunded without delay.

The criteria and procedures of the refund of the provisional tariffs shall be in accordance with the provisions of the relevant Customs laws and regulations.

Part 6

Duration of Safeguard Measures Determination

Section 25 The period from the initiation of the investigation on safeguard measures to the Committee's final determination to impose or terminate the safeguard proceeding, where no increased import or injury exist, shall not exceed two hundreds and seventy days from the date of the initiation. If necessary, this period may be extended for no more than ninety days.

Chapter 3

Determination and Implementation of Safeguard Measures

Section 26 In the case where the Committee has reached a final determination that the increased import and injuries have taken place, safeguard measures shall be imposed under the provisions of this Chapter. Any one or more of the following safeguard measures may be imposed:

- (1) Collection of import tariffs at the determined rates,
- (2) Quantitative import restrictions, or
- (3) Any measure other than (1) and (2) that shall, in effect, reduce or restrict the volume of imported products in order to allow the producers of the like products or the domestic industry the opportunity to implement the adjustment plans as deemed appropriate by the Committee.

Section 27 Under the provisions of Chapter 7, the imposed safeguard measures shall be enforced on the increased import regardless of its source. Such safeguard measures shall apply as necessary to prevent or remedy the injuries in order to allow the producers of the like products or the domestic industry the adjustment period.

Section 28 When import tariffs is imposed, such tariffs shall be considered additional to the tariffs collected under the current customs tariff rate or under the notification on tariff rates issued by the existing customs tariff laws at the time of the import. The provisions of the customs and customs tariff laws shall be similarly applied to the imposed tariffs as the normal import tariffs.

Section 29 When a quantitative import restriction is imposed, such a measure shall not reduce the quantity of the imports below the level of a recent period, unless clear justification is given that such level is necessary to prevent or remedy the injury.

Determination of the import quantitative level pursuant to the first paragraph shall be in accordance with the criteria and procedures notified by the Ministry of Commerce.

Section 30 When import quota is imposed, the Committee may assign the Department of Foreign Trade to negotiate the allocation of shares in the quota with major exporting countries.

In cases in which no agreement regarding quota allocation pursuant to the first paragraph can be reached, shares in the quota shall be allotted to exporting countries based upon the proportions of the total quantity or values of imports of the product imported during a previous representative period. Due account shall be taken of any special factors which may be affecting the trade in the product.

During the application of any safeguard measures pursuant to the first paragraph, no such products shall be imported unless an import certificate issued by the Department of Foreign Trade can be produced to the customs officials.

The import certificate pursuant to the third paragraph shall comply with the format specified by the Department of Foreign Trade.

Section 31 In cases where the injury to the domestic industry and the quantity of imports from certain countries has increased disproportionately in relation to the total increase of imports of the product concerned, the Committee may impose any criteria for import quota allocation as deems appropriate without regards to the criteria under Section 30. Nevertheless, prior consultation with major exporting countries must be sought under the auspices of the WTO's Committee on Safeguards

to whom a clear demonstration that imports from certain countries have increased in disproportionate level to the total increase of imports of the product concerned, the justified reasons for a departure from the provision in Section 30, and the assigned quota allocations in such cases are equitable to all exporters.

The duration of the import quota allocation pursuant to the first paragraph shall not exceed four years.

Section 32 Safeguard measures shall not be applied against a product originating in a developing country if its share of imports does not exceed three per cent (3%) of total imports of the product concerned, provided that the developing countries with less than three per cent (3%) import share collectively account for not more than nine per cent (9%) of total imports of the product concerned.

Chapter 4

Duration and Review of Safeguard Measures

Section 33 Subject to the second paragraph of Section 31 and Section 36, the imposed safeguard measures shall be applied only for such period of time as may be necessary that shall not exceed four years from the date of application.

Section 34 In a case where the expected duration of a safeguard measure is over one year, the safeguard measure shall be progressively liberalized.

Section 35 In a case where the expected duration of a safeguard measure exceeds three years, the Committee shall review the situation not later than the mid-term of the measure.

Section 36 When the Committee deems appropriate or when a petition is submitted by producers of like products or by related domestic industry within the period specified by the Ministry of Commerce, and that there is evidence that the domestic industry is adjusting, the effective period of the safeguard measure may be extended. However, the total period of application of a safeguard measure including the period of initial application, any extension thereof, and any provisional measure shall not exceed ten years. The provisions in Parts 2, 3, 5 and 6 of Chapters 2 and 3 shall be applied to the determination on the extended period of the safeguard measure *mutatis mutandis*.

Section 37 The safeguard measure extended under Section 36 shall not be more restrictive than the existing measure at the time of the extension request.

Section 38 In a case where the application of the safeguard measure has expired, no safeguard measure shall be applied again to the import of a product which has been subject to such a measure, unless a period of more than half of the duration of the application of the previous safeguard measure has elapsed, provided that such period is at least two years.

Any safeguard measure with a duration of 180 days or less may be applied again to the import of a product if at least one year has elapsed since the date of introduction of the measure, and if such as a safeguard measure has not been applied on the same product more than twice in the five year period immediately preceding the date of introduction of the measure.

Chapter 5

Impacts of Safeguard Measures

Section 39 In a case where the compensation agreement is required due to a safeguard measure has been applied or extended for more than three years, the Committee shall determine a compensation based upon their rights to maintain a substantially equivalent level of concessions and other obligations to that existing under the General Agreement on Tariffs and Trade 1994 with the approval of the Cabinet.

Chapter 6

Notification of the Determination

Section 40 When a final decision has been reached to terminate, impose or extend a safeguard measure, the Department of Foreign Trade shall promptly notify the decision and its relevant details to the public.

Notification of the Committee's final decision pursuant to the first paragraph shall be issued in accordance with the criteria, procedures, and conditions specified by the ministerial regulations.

Chapter 7

Safeguard measures under the International Trade Agreements

Section 41 When the safeguard measures specified by an international agreement that Thailand has entered into as a member differ from those specified in this Act on the basis of their determination, investigation, application, duration of application and provisional application, review or any other requirements, any implementation in terms of procedures and conditions shall be in accordance with the obligations that Thailand has committed to under each specific agreement.

Transitory Provisions

Section 42 All determination and application of the safeguard measures being processed under the existing The Ministry of Commerce Notification on Safeguard Measures on Increased Imports B.E. 2542 (1999), issued by virtue of the Export and Import Act B.E. 2522 (1979) prior to the effective date of this Act, shall be governed by the provisions of this Act.

All determinations that have been in process under the abovementioned notification shall be in effect under this Act to the extent that they are not conflicting or contradictory to the provisions of this Act.

Countersigned by

General Surayud Chulanont
Prime Minister
