

## Research Paper

### The Policy Recommendations on the Extension of Safeguard Investigations

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#### 1. Introduction

The Agreement on Safeguards sets forth the rules for application of safeguard measures pursuant to Article XIX of GATT 1994. Safeguard measures are defined as “emergency” actions with respect to increased imports of particular products, where such imports have caused or threaten to cause serious injury to the importing Member's domestic industry. Such measures, which in broad terms take the form of suspension of concessions or obligations, can consist of quantitative import restrictions or of duty increases to higher than bound rates.

Major guiding principles of the Agreement with respect to safeguard measures are that such measures must be temporary; that they may be imposed only when imports are found to cause or threaten serious injury to a competing domestic industry; that they be applied on a non-selective that they be progressively liberalized while in effect; and that the Member imposing them must pay compensation to the Members whose trade is affected.

The Safeguard Agreement was negotiated in large part because GATT Contracting Parties increasingly had been applying a variety of so-called “grey area” measures to limit imports of certain products. These measures were not imposed pursuant to Article XIX, and thus were not subject to multilateral discipline through the GATT, and the legality of such measures under the GATT was doubtful. The Agreement now clearly prohibits such measures, and has specific provisions for eliminating those that were in place at the time the WTO Agreement entered into force.

In its own words, the Safeguard Agreement, which explicitly applies equally to all Members, aims to: (1) clarify and reinforce GATT disciplines, particularly those of Article XIX; (2) re-establish multilateral control over safeguards and eliminate measures that escape such control; and (3) encourage structural adjustment on the part of industries adversely affected by increased imports, thereby enhancing competition in international markets.

Nowadays, there is a gap analysis to see what the extension of safeguard investigation definition is. The WTO sees on the law under Article 7.2 Agreement on Safeguards. If we see under that agreement, we look forward on how the reader interprets this agreements.

Furthermore, there was a case of the other WTO member country has been evaluated on the Agreement on Safeguards under article 7.2. They see that this agreement refers to the initial period of the first measure. If we see the European Union has explained that there were some requirements which impacts on the extension of safeguard investigations.

The period of safeguard measures shall not exceed four years for initial, unless it is extended until the maximum period is ten years for developing countries. The

requirements are needed to assess the feasibility of the extension of safeguard investigations.

## **2. The first view of the interpretation under Article 7.2 Safeguard Agreement**

On Article 7.2 stated “The period mentioned paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Article 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Article 8 and 12 are observed.”

It is necessary to see that the importance of a surge in the number of imports as required in article 2 of Safeguard Agreement, and the need for serious injury or threats of serious injury from all performance indicators of the Domestic Industry as required in article 4 of Safeguard Agreement, and the need for causality between serious injury or threats of serious injury with spike in the number of imports (causality). There is also a need for an analysis of other factors, and other requirements such as the imposition of initial safeguards.

The important part that should be considered is the condition of the domestic industry and either increase in imports. The significant elements that really be the object of the extension of safeguard investigations is the causal link between the increased imports and injury of the domestic industry. There is an investigation under article 7.2 of the Safeguard Agreement that in the same procedures of the initial measure.

All requirements under article 2, 3, 4, and 5 of the Safeguard Agreement should be analyse under the extension of safeguard investigation. Also, those requirements are need to be recent updated data in term of the investigation. Those requirements are the new increase in imports, the new injury of the domestic industry, the new causal link between the increase in imports and the injury of the domestic industry, the new unforeseen developments, and the new other factors than the increased imports.

If the condition does not consider to article 2, 3, 4 and 5 of the Safeguard Agreement, the extension of safeguard measure does not be continued or to be terminated. To improving the fairness under the extension of safeguard investigation, the competent authority should make an opportunity for the interested parties to present evidence and their views to the investigation.

## **3. The Second View of the Interpretation under Article 7.2 Safeguard Agreement**

There is no new investigation regarding on the evaluation under article 7.2 of the Safeguard Agreement. With regard to Safeguard Agreement, there are two requirements to assess the necessarily of extension of safeguard measures.

These requirements are necessary to prevent or remedy serious injury of the domestic industry and the industry is adjusting.

For the other requirements like the causal link, the increase in imports, the unforeseen developments under article 2, 3 and 4 of the Safeguard Agreement does not comply with the extension of safeguard measures requirements. Otherwise, there is a condition that should be considered. That condition is in conformity with the procedures set out in article 2, 3, 4 and 5 of the Safeguard Agreement.

Furthermore, article 7.2 of the Safeguard Agreement does not require the new investigation under extension of safeguard. The condition of conformity set out procedures with article 2, 3, 4, and 5 of the Safeguard Agreement refers to the initial investigation. So, there is no new investigation under extension of safeguard.

The competent authority needs to proof that the safeguard measures should be continued or not. The requirement to assess the feasibility of extension of safeguard measures are the necessarily of safeguard measures through the condition of domestic industry and the industry is still adjusting in term of the initial safeguard measure.

To proving the necessarily of safeguard measure is the competent authority should analyse the industry's performance. If the condition is still injury or threat of serious injury, it means the safeguard measure needs to be continued. Also, to analyse of the industry is still adjusting is the competent authority should look out to the structural adjustment program of the domestic industry.

## **4. Other Country's Practices**

### **4.1. Turkey's Wallpaper and Similar Wall coverings**

Turkey's authority has been circulated under this number G/SG/N/10/TUR/15/Suppl.2/G/SG/N/11/TUR/20/Suppl.2 on the date 15 July 2021. Turkey encloses a notification pursuant to Article 7.2, 12.1(c) and Article 9, footnote 2 of the Agreement on Safeguards, on taking a decision to extend a safeguard measure that is being applied against imports of wallpaper and similar wall coverings and non-application of the safeguard measure to developing countries. The initial safeguard measure was notified with the document G/SG/N/8/TUR/15 - G/SG/N/10/TUR/15 - G/SG/N/11/TUR/20, dated 26 June 2015. The first extension of the measure pursuant to Articles 7.2 and 12.1(c) was notified with the document G/SG/N/6/TUR/20/Suppl.1, dated 9 March 2018. The initiation of the review investigation pursuant to Article 7.2 regarding the extension of a safeguard measure was also notified with the document G/SG/N/6/TUR/20/Suppl.2, dated 20 January 2021.

Turkey's authority has been evaluated the evidence that the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof caused by increased imports. The evaluation is proving an

evidence that the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof caused by increased imports.

The investigation has been conducted by the Turkish Investigating Authority. In order to review the situation of the domestic industry after imposition of the safeguard measure, an evaluation of all relevant factors of an objective and quantifiable nature was undertaken for the period under consideration (PUC), January 2016-December 2020. The data, which were submitted by the applicant companies and used in this analysis, represent major proportion of the total domestic production of the product involved according to the 2020 figures.

During the evaluation of an evidence that safeguard measure continues to be necessary to prevent or remedy serious injury, these evaluations are consumption, productivity, domestic sales, profitability, employment, stocks, capacity and capacity utilization. With the entry into force of the safeguard measure, imports of the product under investigation decreased remarkably during the investigation period, while the weighted average import unit price increased continuously except for 2020. It is thought that the reason for the recent increase in imported unit prices is the shift in line with consumer preferences in wallpaper and similar wall coverings to the upper segment product types, which are more expensive on a global basis. It is understood that the increase in domestic production unit sales prices reflects a similar situation. In addition, the introduction of a specific safeguard measure has had imported products shift to upper segment high unit price segment in the market since they are subject to less burden of measure proportionately. Finally, rise in production costs is another reason behind the increase in unit prices.

The other evaluation under the extension of safeguard investigation is an evidence that the industry concerned is adjusting. Safeguard measures in the investigation period, and it is also understood that domestic producers have recovered to some extent in economic indicators. Following the safeguard measure, some economic indicators such as production, sales, capacity and employment increased, and market share of imports declined considerably. On the other hand, in terms of industrial costs derived from the increasing exchange rate due to the use of imported raw materials; and of commercial costs due to new factory establishment, capacity increase and increase in Research and Development expenditures, it is observed that there has been a decrease in profitability in the first four years of PUC, however, it began to recover in 2020.

It has been found that domestic producers have been endeavoring to adapt to a competitive environment in which safeguard measure will not be implemented in the future. Most of the companies, that started production activities especially after the safeguard measure, expanded their product ranges by developing new and different type and size wallpapers, focusing on premium products, established research and development units which were absent in the past and carried out some improvements within the company in order to increase quality standards.

On the other hand, Covid-19 pandemic has also had significant negative effects on the wallpaper sector, with a contraction in the market and rising raw

material costs. It is known that efforts are being made by the companies in the sector to supply the raw materials from domestic producers, which are needed by the wallpaper sector. It is considered that the safeguard measure should be continued in order to make the paper and paint production in Turkey, which are the most important raw materials in terms of added-value and to develop the subsidiary industry branches more easily.

In this context, it is understood that the domestic wallpaper industry is in the process of adaptation within the framework of the external dependency on inputs, the resources allocated for the research and developments for the fashionable products, the establishment of new factories and the financing costs due to the capacity increase. Besides, the domestic producers recently focused on the premium segment products and also the new machines, which have the ability of production of different size wallpapers. The domestic industry started to establish a more firm and widespread marketing network after 2018 to be able to more competitive against the global companies.

#### **4.2. European Union's Certain Steel Products**

European Union's authority has been circulated under this number G/SG/N/8/EU/1/Suppl.2/G/SG/N/10/EU/1/Suppl.11/G/SG/N/11/EU/1/Suppl.8 on the date 11 June 2021. The European Union had notified the initiation of an investigation on 26 February 2021(G/SG/N/6/EU/1/Suppl.2). The scope of the investigation was to decide whether the safeguard measure should be prolonged beyond 30 June 2021. The European Union (EU) hereby notifies to the Committee on Safeguards, pursuant to Article 12.1(c) of the Agreement on Safeguards, its proposal to extend a safeguard measure on imports of certain steel products.

The evaluation under safeguard investigation relates to an evidence that the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof and that the industry concerned is adjusting. Pursuant to Article 7, paragraphs 2 and 3 of the Agreement on Safeguards, a safeguard measure can be in place for a maximum duration of 8 years. The Agreement also foresees that a measure originally imposed cannot last more than 4 years, unless the competent authorities of the importing Member have determined that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The EU safeguard measure was originally in place for a period of 3 years.

To determine whether the safeguard measure continues to be necessary to prevent or remedy serious injury or threat thereof imports and whether the industry is adjusting, the European Union undertook a comprehensive analysis of a broad set of data from multiple sources: The European Union assessed, *inter alia*: the evidence provided by the Union industry in their questionnaire replies and written submissions, the information provided by interested parties (users, importers, exporting producers and exporting country governments) in their written submissions, as well as information available to the European

Union including statistical databases and relevant publications on the steel sector.

The one of the evaluation under the extension of safeguard investigation is economic situation of the Union industry. Furthermore, to assess the economic situation of the Union industry, the developments of imports and other relevant data included in its assessment, the European Union assessed the data of the period 2018-2020 ('the period considered').

## **5. Conclusion**

In the contents of article 7.2 of the Safeguard Agreement, there are two views in interpreting the article 7.2 of the Safeguard Agreement. The first view is that there is an obligation to analyze the surge in imports and new causalities beyond the imposition of the first safeguards. Furthermore, the second view is that there is no need for a surge in imports and a new causal relationship in the investigation of the extension of the safeguard measures. These two views create a fairly large border for practitioners and academics alike. A guidance is needed in finding a mechanism for investigating the extension of the safeguard measures for Indonesia Safeguard Committee as the official authority in Indonesia.

The EU's authority and the Turkey's authority were concluded that the evaluation to use an extension of safeguard measure is considered to the period considered not to period of investigation. The extension of safeguard measure do not use the new investigation, it relates to the previous investigation on the initial safeguard measure.

There is no evaluation under the increase in imports under the new investigation. The procedure and mechanism under article 7.2 of the safeguard agreement mentioned that there are two requirements to determine the safeguard measures need to extend or not. Two requirements are to whether the safeguard measure need to be necessary to prevent or remedy serious injury to the domestic industry.

## **6. Policy Recommendations**

When the competent authorities do phase of extension of safeguard measures, it needs two requirements to assess it. It is hoped that all member countries follow the rules of extension of safeguard measures. This research may assist all of the competent authorities in each WTO member country to assess those requirements in every phase of extension of safeguard to ensure fairness in the global economic market.

Those two requirements are the necessarily of preventing or remedying serious injury to the domestic industry and the industry is still adjusting. There is no new investigation, only the assessment of the initial safeguard measure to extend or not. Also, there is no new causal link, no new increased imports and no new injury to assess the extension of safeguard measures.

## 7. References

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