

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

TURKEY

The following communication, dated 9 July 2004, is being circulated at the request of the Delegation of Turkey.

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This is to notify the WTO Secretariat that, pursuant to Article 12.6 of the Agreement on Safeguards, Turkey's new legislation on safeguard measures has recently been promulgated. Please find enclosed the unofficial translation of the new legislation consisting of:

- Decree No. 2004/735 of the Council of Ministers, dated 10 May 2004; and
- the new Regulation on Safeguard Measures for Imports.

The Decree and the new Regulation were promulgated on 29 May 2004 and 8 June 2004, respectively, and replaced the previous legislation enclosed in WTO document G/SG/N/1/TUR/2, circulated on 14 December 1995.

DECREE ON SAFEGUARD MEASURES FOR IMPORTS

(Official Gazette No: 25476 of 29 May 2004)

Objective and Scope

Article 1 - This Decree covers the procedures and principles related to taking safeguard measures where a product is imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic producers producing like or directly competitive products, to remedy this serious injury or threat of serious injury, provided that these measures are temporary and limited to the extent of the injury or threat of injury, by taking the international obligations and the interests of the country into consideration.

Definitions

Article 2 - The definitions under this Decree are given below:

- (a) Undersecretariat: The Undersecretariat for Foreign Trade;
- (b) Directorate General: The Undersecretariat for Foreign Trade, Directorate General of Imports;
- (c) Board: The Board for the Evaluation of Safeguard Measures for Imports;
- (d) Tariff quota: The quantity or value of imports, which is exempted from customs duties and/or other financial charges or subject to reduced customs duties and/or other financial charges for a specified period;
- (e) Domestic producers: The producers as a whole of like or directly competitive products operating within the territory of the country, or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products;
- (f) Serious injury: A significant overall impairment in the position of domestic producers;
- (g) Threat of serious injury: Serious injury that is clearly imminent.

Authority

Article 3 - Under this Decree the Undersecretariat for Foreign Trade has the authority:

- (a) to propose, apply and monitor safeguard measures;
- (b) to extend investigation period if necessary;
- (c) to make consultations at the international level in the framework of the related legislation and to prepare compromise statements and to apply them which enter into force in conformity with the procedures concerned;

- (d) to make examinations on imported goods and the accuracy of declarations;
- (e) to coordinate and give instructions to the relevant institutions and organizations for the implementation of this Decree;
- (f) to prepare Regulations and Communiqués concerning the implementation of this Decree.

The Board for the Evaluation of Safeguard Measures for Imports

Article 4 - The "Board for the Evaluation of Safeguard Measures for Imports" has been established with this Decree. The Board, under the chairmanship of the Director General of Imports or a Deputy Director General to be assigned by the Director General of Imports, shall compose of an authorized representative from each of the Ministry of Industry and Trade, the Undersecretariat of the State Planning Organization, the Undersecretariat of Customs, the Union of the Chambers of Commerce, Industry, Maritime Trade and Commodity Exchanges of Turkey together with the General Directorates of Exports, the European Union Affairs and Agreements of the Undersecretariat and the relevant Head of Department of the Directorate General of Imports. The Chairman of the Board may invite relevant experts to the meeting of the Board for consultation.

The Secretarial services of the Board are carried out by the Directorate General.

The decisions on safeguard measures shall be taken by the Board upon the proposal of the Directorate General.

The Board shall have the following functions:

- (a) to take decisions on whether or not to initiate an investigation;
- (b) to take decisions to continue or to terminate the investigation where the application is withdrawn during the investigation;
- (c) to take decisions on whether or not to take provisional safeguard measures, in case of their adoption to determine the form, extent and duration of these measures;
- (d) to take decisions on whether or not to take safeguard measures, in case of their adoption to determine the form, extent and duration of these measures;
- (e) to take decisions on current safeguard measures;
- (f) to make proposals to obtain a Decree of the Council of Ministers.

Provisional Safeguard Measures

Article 5 - Provisional safeguard measures may be applied, by taking the interests of the country into consideration, in critical circumstances where delay would cause damage which it would be difficult to repair and where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic producers producing like or directly competitive products.

Provisional safeguard measures can take the form of customs duties, additional financial charges, restrictions on quantity/value of imports, tariff quota or a combination of these forms.

Where the provisional safeguard measures take the form of customs duties, the difference between the customs duty set in the Import Regime Decree and the customs duty set as a provisional safeguard measure shall be collected as a security in accordance with the relevant provisions of customs legislation.

Where the provisional safeguard measures take the form of additional financial charges, the difference between the additional financial charge set in the Import Regime Decree and the additional financial charge set as provisional safeguard measure shall be collected as a security in accordance with the relevant provisions of customs legislation. In cases in which there is no additional financial charge set in Import Regime Decree, the whole amount of the additional financial charge set as provisional safeguard measure shall be collected as a security in accordance with the relevant provisions of customs legislation.

At the end of the investigation, if the Board decides that safeguard measures are necessary, the amount collected as a security shall be forfeited to the Treasury.

In cases in which the amount of the safeguard measure is lesser than the amount of the provisional safeguard measure, the difference shall be refunded. However, in cases in which the amount of the safeguard measure is higher than the amount of the provisional safeguard measure, the difference shall not be collected.

On the other hand, if the Board decides that no safeguard measures are necessary, the provisional safeguard measure shall be repealed and the amount previously collected as a security shall be refunded in accordance with the provisions on the repayment of the secured customs duties of customs legislation.

Safeguard Measures

Article 6 - Safeguard measures may be applied following an investigation, by taking the interests of the country into consideration, where a product is imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic producers producing like or directly competitive products.

Safeguard measures can take the form of customs duties, additional financial charges, restrictions on quantity/value of imports, tariff quota or a combination of these forms.

Provisions of Other Legislation

Article 7 - This Decree does not preclude the application of:

- (a) prohibitions, quantitative restrictions or controls concerning imports on grounds of public morality, public order or public security; the protection of health and life of humans, animals and plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of intellectual, industrial and commercial property;
- (b) the transactions concerning foreign exchange;
- (c) the obligations arising from the international agreements;
- (d) the provisions of the Import Regime Decree, the Regulation on Imports and the other legislation relating to the imports that are not in violation of this Decree.

Publication

Article 8 - The decisions on the initiation and the conclusion of safeguard investigations and the decisions on current safeguard measures under this Decree shall be published in the Official Gazette.

Regulation

Article 9 - The procedures and principles concerning the application of the provisions of this Decree and the working procedures and principles of the Board shall be specified in the Regulation.

Repealed Legislation

Article 10 - Decree on Surveillance and Safeguard Measures for Imports and the Administration of Quotas and Tariff Quotas which put into force in accordance with the Council of Ministers Decree No: 95/6814 of 30 April 1995, and Decree on Surveillance and Safeguard Measures for Imports of Products Originating in Certain Countries which put into force in accordance with the Council of Ministers Decree No: 95/7348 of 6 October 1995 have been repealed with all its appendixes and amendments.

Provisional Article 1 - Before the entry into force of this Decree, the procedures concerning the investigations conducted and the safeguard measures imposed under the Decree on Surveillance and Safeguard Measures for Imports and the Administration of Quotas and Tariff Quotas which put into force in accordance with the Council of Ministers Decree No: 95/6814 of 30 April 1995, and Decree on Surveillance and Safeguard Measures for Imports of Products Originating in Certain Countries which put into force in accordance with the Council of Ministers Decree No: 95/7348 of 6 October 1995 shall carry on under the provisions of this Decree.

Provisional Article 2 - References to the repealed Decree on Surveillance and Safeguard Measures for Imports and the Administration of Quotas and Tariff Quotas which put into force in accordance with the Council of Ministers Decree No: 95/6814 of 30 April 1995, and Decree on Surveillance and Safeguard Measures for Imports of Products Originating in Certain Countries which put into force in accordance with the Council of Ministers Decree No: 95/7348 of 6 October 1995 concerning the safeguard measures shall be understood as referring to this Decree.

Entry into Force

Article 11 - This Decree shall enter into force on the date of its publication.

Execution

Article 12 - The Minister in charge of the Undersecretariat for Foreign Trade shall execute the provisions of this Decree.

REGULATION ON SAFEGUARD MEASURES FOR IMPORTS

(Official Gazette No: 25486 of 8 June 2004)

Objective and Scope

Article 1 - This Regulation, in accordance with the Decree No. 2004/7305 of 10 May 2004, covers the procedures and principles related to taking the safeguard measures where a product is imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic producers producing like or directly competitive products, to remedy this serious injury or threat of serious injury, provided that these measures are temporary and limited to the extent of the injury or threat of injury, by taking the international obligations and the interests of the country into consideration.

Definitions

Article 2 - The definitions under this Regulation are given below:

- (a) Undersecretariat: The Undersecretariat for Foreign Trade;
- (b) Directorate General: The Undersecretariat for Foreign Trade, Directorate General of Imports;
- (c) Board: The Board for the Evaluation of Safeguard Measures for Imports whose working procedures and principles are specified in Article 12;
- (d) Tariff quota: The quantity or value of imports, which is exempted from customs duties and/or other financial charges or subject to reduced customs duties and/or other financial charges for a specified period;
- (e) Quota: The quantity and/or value of imports for which permission is given for a specified period;
- (f) Domestic producers: The producers as a whole of like or directly competitive products operating within the territory of the country, or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products;
- (g) Serious injury: A significant overall impairment in the position of domestic producers;
- (h) Threat of serious injury: Serious injury that is clearly imminent;
- (i) Interested party: Authorized representatives of interested country/countries, domestic producers, importers, exporters/producers, consumers, users or organizations with which they are affiliated or their authorized representatives.

Preliminary Examination

Article 3 - A preliminary examination may be initiated on the initiative of the Directorate General or upon a written application by natural or legal persons concerned or the Professional Organizations or Chambers with which they are affiliated if there is a claim that a product is imported in such increased quantities as to cause or threaten to cause serious injury to the domestic producers producing like or directly competitive products. The applications should be made via application forms, which are provided by the General Directorate, and the forms must be filled completely and properly.

The General Directorate, in case it is deemed necessary, can request additional information and documents at any stage of the preliminary examination.

Where the application is withdrawn during the preliminary examination, the procedures may be terminated by the General Directorate.

The results of the preliminary examination shall be presented to the Board for its evaluation. Basically the followings shall be taken into account:

- (a) Level and conditions of imports and import trends of the product concerned and the factors related to the economic conditions of the domestic producers;
- (b) The measures that may be taken under this Regulation.

If the Board decides not to initiate an investigation, its decision shall be notified in writing to the applicants by the Directorate General.

Investigation

Article 4 - In case the Board decides to initiate an investigation, its decision shall be announced in the Official Gazette. The announcement shall state the period within which interested parties may make themselves known, submit their views in writing and provide information. It shall also state the period within which interested parties may apply to be heard orally by the Directorate General. These periods shall not exceed 30 days starting from the publication of the announcement in the Official Gazette.

The interested parties must be heard by the Directorate General in case they have made a written application within the period laid down in the announcement published in the Official Gazette, showing that they are actually likely to be affected by the outcome of the investigation and there are special reasons for them to be heard orally.

The Directorate General may hear the interested parties individually or collectively. Oral information provided by the interested parties shall be taken into account by the Directorate General provided that that information is submitted in writing. The interested parties, which made themselves known in the period stated in the announcement, may, upon a written request, inspect the information available in connection with the investigation. If the request is conceivable, the interested parties may inspect the information provided that that information is not confidential within the meaning of Article 6.

When information is not supplied within the time limits set by the Directorate General or the investigation is significantly impeded, findings shall be made on the basis of the facts available. Where the Directorate General finds that the interested parties have supplied it with false or misleading information, it shall disregard the information.

Where the application is withdrawn during the investigation, the Board shall examine the situation and may decide to terminate the investigation.

The investigation is carried out by the Directorate General and is completed within 9 (nine) months. In exceptional circumstances this period may be extended for 2 (two) months.

Verification Visits

Article 5 - The Directorate General may carry out verification visits to verify information supplied by interested parties and/or to get further information.

The parties concerned shall be advised of the nature of the information to be verified during verification visits and/or of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of the information obtained.

Confidentiality

Article 6 - Information received pursuant to this Regulation shall be used only for the purpose for which it was requested. Any information of a confidential nature or any information provided on a confidential basis shall not be revealed without written permission from the suppliers of such information without prejudice to the provisions of the law concerning the acts constituting a crime.

Any information shall be treated as confidential where its disclosure would be the cause of unfair competition and earnings or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he/she has acquired the information. Information which is provided on a confidential basis by the parties to the investigation shall, also be treated as such, provided that a good cause is shown.

Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted as confidential. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided in writing.

However, if it appears that a request for confidentiality is not warranted and if the supplier of the information is unwilling to authorize its disclosure in any form, the information concerned may be disregarded unless it can be verified from appropriate sources.

The preceding provisions shall not preclude the use of information provided as a reference to the general information and in particular to the reasons on which decisions taken under this Regulation are based.

Determination and Evaluation of Serious Injury and Threat of Serious Injury

Article 7 - In the examination of the trend of imports and of conditions in which they take place and of serious injury or threat of serious injury to the domestic producers in particular the following factors shall be taken into consideration:

- (a) The volume of imports, whether or not there has been a significant increase, either in absolute terms or relative to domestic production or consumption;

- (b) The price of imports, whether or not there is a significant price undercutting as compared with the price of a like or directly competitive domestic product;
- (c) The impact on domestic producers producing like or directly competitive products as indicated by trends in certain economic factors such as: production, productivity, capacity utilization, sales, market share, profit/loss and employment.

Where a threat of serious injury is alleged, the Directorate General may examine that this alleged situation is likely to develop into actual injury. In such cases the following factors may be taken into account:

- (a) The rate of increase of the exports to Turkey;
- (b) Stocks and export capacity in the country of export and/or origin, as it stands or is likely to be in the foreseeable future, and likelihood that that capacity will be used to export to Turkey.

Termination of Investigation

Article 8 - At the end of the investigation, the Directorate General shall submit a report on the results of the investigation with its proposal to the Board.

If the Board decides that no safeguard measures are necessary, the investigation shall be terminated and the decision to terminate the investigation, stating a summary of the reasons shall be published in the Official Gazette.

Provisional Safeguard Measures

Article 9 - Provisional safeguard measures may be applied, by taking the interests of the country into consideration, in critical circumstances where delay would cause damage which it would be difficult to repair and where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic producers producing like or directly competitive products.

Provisional safeguard measures can take the form of customs duties, additional financial charges, restrictions on quantity/value of imports, tariff quota or a combination of these forms.

In cases in which the provisional safeguard measures take the form of customs duties, the difference between the customs duty set in the Import Regime Decree and the customs duty set as a provisional safeguard measure shall be collected as a security in accordance with the relevant provisions of customs legislation.

In cases in which the provisional safeguard measures take the form of additional financial charges, the difference between the additional financial charge set in the Import Regime Decree and the additional financial charge set as provisional safeguard measure shall be collected as a security in accordance with the relevant provisions of customs legislation. In cases in which there is no additional financial charge set in Import Regime Decree, the whole amount of the additional financial charge set as provisional safeguard measure shall be collected as a security in accordance with the relevant provisions of customs legislation.

At the end of the investigation, if the Board decides that safeguard measures are necessary, the amount collected as a security shall be forfeited to the Treasury.

In cases in which the amount of the safeguard measure is lesser than the amount of the provisional safeguard measure, the difference shall be refunded. However, in cases in which the amount of the safeguard measure is higher than the amount of the provisional safeguard measure, the difference shall not be collected.

On the other hand, if the Board decides that no safeguard measures are necessary, the provisional safeguard measure shall be repealed and the amount previously collected as a security shall be refunded in accordance with the provisions on the repayment of the secured customs duties of customs legislation.

Safeguard Measures

Article 10 - Safeguard measures may be applied following an investigation, by taking the interests of the country into consideration, where a product is imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic producers producing like or directly competitive products.

Safeguard measures can take the form of customs duties, additional financial charges, restrictions on quantity/value of imports, tariff quota or a combination of these forms.

In cases in which the safeguard measures take the form of quantity and/or value restriction (establishment of the quota), the average level of imports in the last three representative years for which statistics are available shall be taken into account unless a different level is necessary to prevent or remedy serious injury.

Duration and Review of Safeguard Measures

Article 11 - Safeguard measures shall be applied for such a period of time to be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic producers to the conditions of the internal market. The duration of safeguard measures shall not exceed 4 (four) years, including the duration of any provisional measure unless it is extended under paragraph 3.

If the duration of the measure exceeds one year, the measure shall be progressively liberalized at regular intervals during the period of application. If the duration of the measure exceeds three years, the situation shall be reviewed not later than the mid-term of the measure in order to ascertain whether its application is still necessary or to increase the pace of liberalization.

The duration of the measure may be extended in accordance with the results of a new investigation to be initiated provided it is determined that the safeguard measure continues to be necessary to prevent or remedy serious injury and there is evidence that the domestic producers are adjusting to the conditions of the internal market. An extended measure shall not be more restrictive than it was at the end of the initial period, and shall continue to be liberalized. The total period of application of a safeguard measure shall not exceed 10 (ten) years.

No safeguard measure shall be applied again to the import of a product which has been subject to such a measure for a period of time equal half to that during which such measure had been previously applied, provided that the period of non-application is at least 2 (two) years.

A 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 a safeguard measure on the import of that product and such a safeguard measure has not been applied on the same product more than twice in the five-year period preceding the date of introduction of the measure.

The Directorate-General may convene a meeting of the Board during the period of application of a safeguard measure on its own initiative or upon a request to examine the effects of the measure and to evaluate whether its application is still necessary. The Board evaluates the effects and results of the measure and may take a decision to continue for application of the measure or withdraw it. The decisions, stating a summary of the reasons, taken by the Board shall be published in the Official Gazette.

Working Procedures and Principles for the Board

Article 12 - The working procedures and principles for the Board of Evaluation of Safeguard Measures for Imports are as follows:

The Board shall convene with an absolute majority upon the call of the Chairman. In case such a majority shall not be obtained in the first meeting, no majority shall be required in the meeting to be held in the following day.

The Board shall take decisions on the safeguard measures upon the proposal of the Directorate General.

The Board shall take decisions with majority vote of the Board members attending the meeting. In case of equality, the Chairman of the Board has a casting vote.

In case where it is determined that the Board members that have such relation as defined in Article 245 of the Code of Civil Procedure No.1086 of 18 June 1927, with the parties concerned, shall not participate in the meetings.

The Board Members that are representatives of the professional organizations should not be the producers, exporters or importers of the product subject to the investigation or should not deal with the trade thereof by any manner whatsoever. Otherwise the provision of the above paragraph shall be applied.

The secretarial services of the Board are carried out by the Directorate General.

Provisions of Other Legislation

Article 13 - This Regulation does not preclude the application of:

- (a) prohibitions, quantitative restrictions or controls concerning imports on grounds of public morality, public order or public security; the protection of health and life of humans, animals and plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of intellectual, industrial and commercial property;
- (b) the transactions concerning foreign exchange;
- (c) the obligations arising from the international agreements;
- (d) the provisions of the Import Regime Decree, the Regulation on Imports and the other legislation relating to the imports that are not in violation of this Regulation.

Communiqué

Article 14 - The Undersecretariat is authorized to promulgate the Communiqué concerning the application of the provisions of this Regulation.

Repealed Regulations

Article 15 - Regulation on Surveillance and Safeguard Measures for Imports published in the Official Gazette dated 1 June 1995, No: 22300 (bis) and Regulation on Surveillance and Safeguard Measures for Imports of Products Originating in Certain Countries published in the Official Gazette dated 1 November 1995, No:22450 have been repealed.

Provisional Article 1 - Before the entry into force of this Regulation, the procedures concerning the investigations conducted and the safeguard measures imposed under the Regulation on Surveillance and Safeguard Measures for Imports published in the Official Gazette dated 1 June 1995, No: 22300 (bis) and Regulation on Surveillance and Safeguard Measures for Imports of Products Originating in Certain Countries published in the Official Gazette dated 1 November 1995, No: 22450 shall carry on under the provisions of this Regulation.

Provisional Article 2 - References to the repealed Regulation on Surveillance and Safeguard Measures for Imports published in the Official Gazette dated 1 June 1995, No: 22300 (bis) and Regulation on Surveillance and Safeguard Measures for Imports of Products Originating in Certain Countries published in the Official Gazette dated 1 November 1995, No: 22450 concerning the safeguard measures shall be understood as referring to this Regulation.

Entry into Force

Article 16 - This Regulation shall enter into force on the date of its publication.

Execution

Article 17 - The Minister in charge of the Undersecretariat for Foreign Trade shall execute the provisions of this Regulation.
