

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

THAILAND

The following communication, dated 14 December 1999, has been received from the Permanent Mission of Thailand.

**Ministry of Commerce Notification
on
Safeguard Measures
B.E. 2542**

Recognizing the need to safeguard the domestic industry from injury caused by increased imports of the product pursuant to Agreement on Safeguard of the World Trade Organization; with authority as prescribed by Article 5 of the Import-Export Act B.E. 2522; the Minister of Commerce, under an approval of the Cabinet, decrees as follows:

Section 1 This Notification is called "Ministry of Commerce Notification on Safeguard Measures B.E. 2542".

Section 2 This Notification is effective upon the first consecutive day after the date of its publication in the Royal Gazette.

Section 3 In this Notification;

3.1 The term "safeguard measures" means specified measures, prescribed under the Authority of the Import-Export Act B.E. 2522 so as to prevent an emergence of injury incurred from increased imports of the product, which are exemplified as a collection of premium upon importation or quantitative restrictions.

3.2 The term "increased imports of the product" means that the product is being imported into Thailand in such increased quantities, absolute or relative to domestic production.

3.3 The term "injury" means serious injury or threat of serious injury caused by the imports to a domestic industry on the basis of objective evidence.

3.4 The term "domestic industry" means the domestic producers as a whole of the like or directly competitive products or domestic producers of like or directly competitive products, of which combined output constitutes a major proportion of the total production in Thailand, provided that

The term “Like products” means products which are identical in all respects, or whose characteristics significantly resemble those of imported products.

3.5 The term “interested parties” includes:

3.5.1 foreign producers or exporters, or trade or business association, most members of which are producers or exporters of such products.

3.5.2 the governments of the foreign exporting countries;

3.5.3 importers or domestic producers of like or directly competitive products or trade or business associations, a majority of the members of which are importers or producers of such products;

3.5.4 any legal persons determined to be an interested party by the Department of Foreign Trade.

3.6 The term “Committee” means the Committee on Safeguard Measures.

Section 4 Submission and Determination of petition for safeguard investigation

4.1 A domestic industry may submit a written petition to the Department of Foreign Trade, requesting an initiation of an investigation for the purpose of applying safeguard measures against increased imports of the product causing injury.

Information and evidence supporting an existence of the injury to domestic market from increased imports shall be furnished by petitioners to the Department of Foreign Trade.

If the Department of Foreign Trade determines that there is a ground for complaint, it shall initiate an investigation.

4.2 In cases where the Department of Foreign Trade considers that there exist increased imports causing the injury or threatening to cause the injury to domestic industry, the Department of Foreign Trade may initiate an investigation.

Section 5 Investigation

The Department of Foreign Trade shall investigate in accordance with the following procedure:

5.1 Publishing a notice of initiation in official publication or using other appropriate means for public notice indicating a type of imported product, the date of initiation, and a summary of preliminary information and notifying to all interested parties.

5.2 Throughout an investigation, the Department of Foreign Trade shall provide timely opportunity for interested parties presenting evidence and their views, supporting or arguing the presentations of other parties, particularly whether an investigation would benefit public interest.

Any information which is by nature confidential or which is provided on a confidential basis shall, upon good cause shown, be treated as such by the Department of Foreign Trade. Such information shall be disclosed only with specific permission of the party submitting it. In such case, the Department of Foreign Trade shall require interested parties providing confidential information to

furnish non-confidential summaries. If such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible must be provided.

In case that the Department of Foreign Trade finds that a request for information being treated as confidential is not warranted and that the supplier of the information is unwilling to make the information public, the Department of foreign Trade may disregard such information unless it can be demonstrated to its satisfaction from related agencies that the information is correct.

5.3 In a deliberation of whether the increased imports cause the injury, the Department of Foreign Trade shall evaluate all relevant factors. In particular;

- 5.3.1 The rate of increase and amount of the increased imports,
- 5.3.2 The share of the domestic market taken by increased imports,
- 5.3.3 changes in the levels of sales,
- 5.3.4 production,
- 5.3.5 productivity,
- 5.3.6 capacity utilization,
- 5.3.7 profit and loss,
- 5.3.8 employment.

5.4 In determining the injury referred to in paragraph 5.3, the investigation must clearly demonstrate that such injury is directly resulted from the increased imports. When factors other than increased imports are causing injury at the same time, such injury shall not be brought into consideration.

5.5 If the investigation result indicates that such increased imports cause injury, the Department of foreign Trade shall report its findings and propose an application of safeguard measures to the Committee.

5.6 If the investigation result indicates that the increased imports do not cause injury, the Department of Foreign Trade shall terminate the investigation.

Section 6 Safeguard measures shall be applied to imports of the product from all sources and shall be enacted according to the following rules and conditions:

6.1 Safeguard measures shall be implemented only to the extent necessary to prevent or remedy injury and to facilitate adjustment of the domestic industry concerned.

In order to promote effectiveness of the measure implementation and to be consistent with such conditions in paragraph one, the domestic industry petitioning for an investigation is required to provide an adjustment plan to the Department of Foreign Trade during the three-month period after the date on which safeguard measure is applied.

6.2 When a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of past imports, unless clear justification is given that lower level of imports is necessary to prevent or remedy injury.

Past import quantities, as prescribed previously, shall be the average imports in the last three years. In case that there is no import in all the last three years, the available import statistics shall be used.

6.3 When an import quota is to be implemented, an agreement with respect to the allocation of shares in the quota may be made with all other exporting countries having a substantial portion of the

imports. If such quota management can not be agreed to, quota shall be allocated to such countries according to the proportions of the total volume or value of such imports during an appropriate period.

If there are increased imports with disproportionate rate in relation to the total increase of imports of the products concerned, the authorities may depart from the above-mentioned approach provided that any other adopted action shall be in compliance with obligations under Agreement.

6.4 Safeguard measures shall not be applied against a product originating in a developing country as long as its share of Thai imports of the product concerned does not exceed 3 per cent of the total imports of such product, provided that developing countries with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.

Section 7 Provisional Safeguards Measures

When the preliminary determination indicating that there is clear evidence that increased imports cause injury inducing a situation called “critical circumstances” where delay would cause damage which it would be difficult to repair, the Department of Foreign Trade may propose the Committee to notify an application of the provisional safeguard measure in the form of premium collection on such imports at an appropriate rate.

Such collection of duties as prescribed in paragraph one shall not exceed two hundred (200) days.

If the final determination indicates that such increased imports have not caused injury, the collected duties shall be refunded without delay.

Section 8 Duration of Safeguard Measures

The application of safeguard measures shall be used only for such period of time as may be necessary, which shall not exceed four (4) years after the date of application.

If the duration of measure is in effect for more than one (1) year, such a measure shall be progressively liberalized during the period of application until the situation recedes to normal state before the measure application.

If it is determined, as prescribed in Section 5, that the safeguard measure continues to be necessary to prevent injury and that there is evidence that the domestic industry is in the process of adjustment, such a measure may be extended provided that the combined period of the measure is no longer than ten (10) years and the measure shall be in conformity with the procedures set out in the second paragraph of Section 6.1 and in paragraph two of this section.

The extended measure as prescribed in paragraph three shall not be more restrictive than the measure which existed prior to the extension.

Upon expiration of the measure, no safeguard measure shall be applied again to the import of a product which has been subject to such a measure for one-half (1/2) of a period of time that such measure had been previously applied, provided that the period of non-application is at least two (2) years.

The safeguard measure with a duration of no more than one hundred and eighty (180) days may be applied again to the import of a product if: at least one (1) 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 (5) period immediately preceding the date of the introduction of the measure.

In case that a safeguard measure is to be applied or extended and that it is necessary to enter into agreements with exporting countries to compensate for the adverse effects of the measure on their trade, conforming with the WTO Agreement on Safeguards, the Department of Foreign Trade shall forward the issue to the Cabinet for approval.

Section 9 Upon applying a safeguard measure or terminating an investigation, the Department of Foreign Trade shall make public the findings as well as details of an investigation.

Section 10 Reviews of Safeguard Measures

If the duration of safeguard measure exceeds three (3) years, the Department of Foreign Trade shall review the situation not later than the mid-term of the measure. If appropriate, such a measure shall be withdrawn or be increased the pace of liberalization by proposing to the Committee for consideration.

Section 11 The Committee

11.1 There shall be a committee entitled “The Committee on Safeguard Measures”. The committee is composed of the Permanent Secretary of Ministry of Commerce who serves as Chairman, representatives from Ministry of Finance, representatives from Ministry of Foreign Affairs, representatives from Ministry of Industry, representatives from Ministry of Agriculture and Cooperatives, Director-General of the Department of Foreign Trade, Director-General of the Department of Internal Trade, Director-General of the Department of Business Economics, and seven (7) expert members appointed by the Ministry of Commerce.

The individuals to be appointed as expert members of the Committee under provision of the first paragraph shall be experts in fields of international trade, economics, accounting, law, industry, and agriculture.

The Director-General of the Department of Foreign Trade shall appoint officers of the Department of Foreign Trade to serve as secretary and assistant secretary to the Committee.

11.2 The Committee shall have the following authorities and duties:

- (1) to perform their duties involving safeguard measures under this Notification
- (2) to approve or reject undertakings with exporting countries
- (3) to perform other duties as designated under this notification or by the Minister of Commerce.

11.3 Each expert member of the Committee shall have a term of office of six (6) years

At the end of the first two-year (2) period, three-sevenths (3/7) of the expert members of the Committee shall retire by way of lot-drawing, and when the period of four (4) years is reached, the one-half (1/2) of the Committee remaining from the first lot-drawing shall retire by also way of lot-drawing. The retirement of such members by way of drawing is to be considered a retirement by rotation.

11.4 In addition to retirement by rotation, the expert members of the Committee shall automatically retire upon the following;

- (1) death,
- (2) resignation,
- (3) request by the Minister to resign due to inappropriate behavior, dishonesty, or inefficiency on role of the expert member,
- (4) adjudication by the final court decision of imprisonment except in cases in which such adjudication results from offences involving negligence or petty crimes,
- (5) Incompetence or Semi-Incompetence
- (6) bankruptcy.

11.5 Where an expert member of the Committee retires prior to the end of his term, a new member shall be appointed in an expeditious manner. If the remainder of the term for which a new expert member would be appointed is less than ninety (90) days, it is possible not to appoint anyone to fill the post.

The term of office of a newly appointed expert member referred to in the first paragraph shall be the remaining term of the retiring expert member.

11.6 A meeting of the Committee shall be valid only when no less than half (1/2) of the Committee members are present. If the Chairman is not present at the meeting or is unable to perform the assigned functions, the deputy Chairman shall act in his stead. If neither the Chairman nor the Deputy Chairman is present at the meeting or able to perform his assigned duties, the members in attendance shall elect an acting Chairman among themselves.

A decision of the Committee shall be made by a majority vote of all members present at each meeting. Each member has one (1) vote. In the event of a tie, the chairman shall cast the final, decisive vote.

Dissenting views together with reasons thereof which are offered during any session shall be recorded in the minutes of the Committee. Any member of the Committee may request the incorporation of his dissenting view into the determination.

11.7 For the purpose of performing its duties and functions, the Committee may appoint a sub-committee for any specific duty.

Section 12 When there is an initiation of procedures for applying a safeguard measure under this notification, the Department of Foreign Trade shall cooperate with other concerned authorities to expeditiously maintain proceedings in conformity with obligations under Agreement on Safeguards and World Trade Organization (WTO) Agreements.

Section 13 The Ministry of Commerce shall be responsible for the administration of this notification.

Made on 10 June B.E. 2542 (1999)
H.E. Dr. Supachai Panitchapakdi
Minister of Commerce

Re: This Notification is effective on 9 July B.E. 2542 (1999)
