

# **WORLD TRADE ORGANIZATION**

**G/SG/N/1/HND/3**  
16 March 2009

(09-1290)

---

**Committee on Safeguards**

Original: Spanish

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

**HONDURAS**

The following communication, dated 10 March 2009, is being circulated at the request of the delegation of Honduras.

---

Upon instructions from my Government and pursuant to the notification process prescribed in Article 12.6 of the Agreement on Safeguards, we submit herewith a copy of the Central American Regulations on Safeguard Measures, published in Official Gazette No. 31,307 of 19 May 2007, which gives effect to Resolution No. 194-2007 (COMIECO-XLIV) of the Council of Ministers for Economic Integration. The Regulations in question supersede the Central American Regulations on Safeguard Measures notified previously (G/SG/N/1/HND/2).

**RESOLUTION No. 194-2007 (COMIECO-XLIV)**

**THE COUNCIL OF MINISTERS FOR ECONOMIC INTEGRATION**

**WHEREAS:**

1. By Resolution No. 19-96 (COMRIEDRE IV) of 22 May 1996, the Council of Ministers Responsible for Economic Integration and Regional Development approved the Central American Regulations on Safeguard Measures;
2. It is necessary to update the regional regulations in accordance with the undertakings of the States Parties within the framework of the World Trade Organization;
3. The Technical Group that was set up to review and update the Central American Regulations on Safeguard Measures submitted draft amendments to the Regulations for consideration by the relevant forums, and the meeting of Vice-Ministers recommended that they be approved;
4. Pursuant to Article 55.3 of the Guatemala Protocol, the Advisory Committee on Economic Integration was consulted and its comments were duly analysed and the relevant points addressed,

**THEREFORE:**

Pursuant to Articles 11, 12, 37, 38, 46, 52 and 55 of the Protocol to the General Treaty on Central American Economic Integration (Guatemala Protocol); and Articles 6, 7 and 26 of the Convention on the Central American Tariff and Customs Regime,

**DECIDES:**

1. To adopt the amendments to the **CENTRAL AMERICAN REGULATIONS ON SAFEGUARD MEASURES**, in the form in which they appear in the Annex to this Resolution, which forms an integral part thereof.
2. This Resolution shall enter into force thirty (30) days after the date below and shall be published by the States Parties.

Guatemala City, Guatemala, 24 April 2007

Amparo Pacheco Oreamuno  
Vice-Minister representing the Minister of  
Foreign Trade of Costa Rica

Eduardo Ayala Grimaldi  
Vice-Minister representing the Minister  
of the Economy of El Salvador

Luis Oscar Estrada  
Minister of the Economy  
of Guatemala

Jorge Rosa Zelaya  
Vice-Minister representing the Minister  
of Industry and Trade of Honduras

Orlando Solórzano Delgadillo  
Vice-Minister representing the Minister of  
Development, Industry and  
Trade of Nicaragua

## **CENTRAL AMERICAN REGULATIONS ON SAFEGUARD MEASURES**

### **CHAPTER I**

#### **GENERAL PROVISIONS**

**ARTICLE 1. (Definitions)** For the purposes of these Regulations, the expressions indicated below shall have the following meaning:

**AGREEMENT:** The Agreement on Safeguards annexed to the Agreement Establishing the World Trade Organization.

**CONVENTION:** The Convention on the Central American Tariff and Customs Regime and its Protocols.

**COUNCIL OF MINISTERS:** The Council of Ministers for Economic Integration established by Article 37 of the Guatemala Protocol.

**DIRECTLY COMPETITIVE PRODUCT:** A product which is not a like product to the one with which it is compared but is essentially equivalent for commercial purposes because it is intended for the same use and is interchangeable with the latter product.

**DOMESTIC INDUSTRY:** The domestic producers as a whole of the like or directly competitive products operating within the territory of a State Party or those of them whose collective output of like or directly competitive products constitutes at least 25 per cent of the total domestic production of those products.

**GATT 1994:** The General Agreement on Tariffs and Trade 1994, annexed to the Agreement Establishing the World Trade Organization.

**GUATEMALA PROTOCOL:** The Protocol to the General Treaty on Central American Economic Integration, signed on 29 October 1993.

#### **INTERESTED PARTIES:**

- (a) An exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
- (b) the government of the country or countries of origin or provenance of the products subject to investigation;
- (c) a producer of the like or directly competitive product in the importing State Party or a trade or business association a majority of the members of which produce the like or directly competitive product in the territory of the State Party; and
- (d) such other parties as the investigating authority may determine to be potential interested parties.

**INVESTIGATING AUTHORITY:** The Directorate or Directorate-General of Integration of the Ministry or Secretariat of the Economy or, as the case may be, the Directorate competent for matters pertaining to Central American economic integration in each

State Party, or the technical unit with responsibility for investigating situations that may warrant the application of the safeguard measures provided for in these Regulations.

**LIKE PRODUCT:** A product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

**MINISTER:** The Minister or Secretary of each State Party having responsibility for matters relating to Central American economic integration or, as the case may be, the application of safeguard measures.

**REGION:** All of the States Parties as a whole.

**SIECA:** The Secretariat for Central American Economic Integration.

**STATES PARTIES:** The States Parties to the General Treaty on Central American Economic Integration, the Guatemala Protocol, and the Convention on the Central American Tariff and Customs Regime.

**SUBSTANTIAL INTEREST:** Interested WTO Members that export the product subject to the measure and would be affected by it shall be considered to have a substantial interest in the measure.

**THIRD COUNTRIES:** Countries that are not States Parties.

**WTO:** World Trade Organization.

**ARTICLE 2. (Object of the Regulations)** These Regulations set out the provisions for the implementation of Article XIX of the GATT 1994, the Agreement, and, as appropriate, the provisions of the Guatemala Protocol and the Convention.

**ARTICLE 3. (Scope)** The safeguard measures to which these Regulations refer shall apply to imports from third countries.

**ARTICLE 4. (Substantive and procedural rules)** All substantive aspects relating to the application of safeguard measures and procedural aspects not covered by these Regulations shall be determined by the provisions of the instruments referred to in Article 2 of these Regulations.

**ARTICLE 5. (Initiation of proceedings)** The process of investigation for the purpose of verifying whether safeguard measures should be applied may be initiated on application by the domestic industry or, in exceptional cases determined by the investigating authority, ex officio in accordance with the provisions of these Regulations and the Agreement.

Where the investigating authority proceeds ex officio, it shall notify the domestic industry for confirmation of its consent to the pursuit of the investigation. The domestic industry must constitute at least 25 per cent of the total domestic production of the products at issue.

## CHAPTER II

### PROCEDURE FOR THE ADOPTION OF SAFEGUARD MEASURES AGAINST THIRD COUNTRIES

**ARTICLE 6. (Purpose of the procedure)** The purpose of the investigation procedure shall be to determine whether or not it is appropriate to apply safeguard measures when a product is being imported into the territory of a State Party from third countries in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

**ARTICLE 7. (Investigating authority)** The investigating authority shall carry out the enquiries, analyses and evaluations it deems necessary to determine the existence of increased imports, serious injury or threat thereof, and the causal link between the two, for the purpose of establishing whether it is appropriate to impose a safeguard measure.

**ARTICLE 8. (Period of investigation)** The period of investigation shall be understood to be the period covered by imports of products that are alike to or directly competitive with domestic products, which are taking place in such quantities and conditions as to cause or threaten to cause serious injury to the domestic industry.

The period of investigation shall be three years, without prejudice to the investigating authority being empowered to extend or reduce such period.

The investigating authority shall indicate the period of investigation in the resolution initiating the investigation.

**ARTICLE 9. (Standing)** Applications for initiation of an investigation procedure may be made by representatives of the domestic industry prejudiced by the imports in relation to which the investigation is requested.

**ARTICLE 10. (Application requirements)** The application for initiation of an investigation shall contain at least the following information:

- (a) Designation of the investigating authority to which the application is made;
- (b) particulars of the applicant, and in the case of a legal representative, any accreditation documents as may be required by the respective State Party's domestic legislation;
- (c) activity in which the affected producer(s) is/are engaged;
- (d) description of the imported product or products, giving specifications and information enabling the product(s) to be compared with domestic products, and the relevant tariff heading;
- (e) description of the affected domestic product and its tariff heading;
- (f) information demonstrating the increase in the volume of imports of the like or directly competitive product;
- (g) information demonstrating the existence of serious injury or threat of serious injury to a domestic industry;

- (h) volume and value of domestic production of the product alike to or directly competitive with the imported product;
- (i) description of the applicant's share, in volume and value terms, of domestic production, or as the case may be, that of the members of the organization to which the applicant belongs, indicating the percentage share of the output of their products within domestic production;
- (j) volume and value of imports;
- (k) request for initiation of an investigation and for the imposition of a safeguard measure;
- (l) list of known importers and exporters and place at which they may be notified;
- (m) country or countries of origin or provenance of the imports;
- (n) service address;
- (o) place and date; and
- (p) signature of the applicant or legal representative of the domestic industry.

The original application and accompanying documentation shall be provided in as many copies as the number of interested parties identified in the application, except in case of information which is considered confidential.

**ARTICLE 11. (Examination of the application)** Within 30 days of receiving the application, the investigating authority shall examine it and:

- (a) Accept the application, if it fulfils the requirements laid down in these Regulations, and declare the initiation of the investigation;
- (b) if the application is incomplete, notify the applicant so that the latter may fulfil the relevant requirements within 30 days; or
- (c) reject the application by means of a reasoned resolution, if it does not provide sufficient evidence to justify initiating the investigation, or if the application has not been made on behalf of a domestic industry in accordance with the provisions of these Regulations.

At the request of the applicant, the investigating authority may extend the time-limit referred to in subparagraph (b) of this Article for a further period of not more than 30 days.

If the applicant submits the information requested in accordance with subparagraph (b) of this Article, the investigating authority shall decide to initiate the investigation or reject the application within a period of not more than 30 days following the submission of the information.

If the information requested is not submitted within the stipulated period, the investigating authority shall consider the application abandoned and reject and file it, without prejudice to the right of the party concerned subsequently to submit a new application.

**ARTICLE 12. (Notification of rejection of the application)** The resolution rejecting an application shall be notified within ten days of its date of issue.

**ARTICLE 13. (Initiating resolution)** Where the investigating authority decides, following the examination referred to in Article 11 of these Regulations, that there is evidence to justify an investigation, it shall issue a resolution declaring the initiation of the investigation.

**ARTICLE 14. (Information to be contained in the initiating resolution)** The resolution initiating an investigation shall contain at least the following information:

- (a) Identification of the investigating authority initiating the procedure, and date and place of issue of the resolution;
- (b) indication that the application and its accompanying documentation have been accepted;
- (c) name or business name of the domestic producer or producers of like or directly competitive products and place at which they may be notified;
- (d) name or business name of the importers and exporters and place at which they may be notified;
- (e) country or countries of origin or provenance of the imports under investigation;
- (f) detailed description of the product or products that have been or are being imported, together with their tariff heading;
- (g) description of the domestic product alike to or directly competitive with the product that has been or is being imported;
- (h) period of investigation;
- (i) reasons and justification for the resolution, with an account of the evidence submitted;
- (j) time-limit granted to interested parties to submit written statements and any other evidence they consider pertinent; and
- (k) determination of the information that is to be requested from the interested parties in questionnaires and forms.

**ARTICLE 15. (Notification of initiation of an investigation)** The resolution initiating an investigation shall be notified directly to those interested parties of which there is reasonable knowledge and to the WTO Committee on Safeguards within ten days of the date of its publication. The notification to the interested parties shall be accompanied by a copy of the application and non-confidential accompanying documents.

The notification may be sent by fax, electronic mail, courier, or any other communication medium as may allow confirmation of receipt.

Interested parties shall have a period of 45 days from the day following the notification in which to submit evidence. At the request of an interested party, the investigating authority may extend this time-limit for a period of not more than 30 days.

**ARTICLE 16. (Time-limit for the investigation)** The investigation shall be concluded within six months, but may, in exceptional circumstances determined by the investigating authority, be concluded within a maximum of 12 months of its date of initiation.

**ARTICLE 17. (Record and access thereto)** All information provided by interested parties, together with the information compiled by the investigating authority ex officio, shall be filed in chronological order in two separate files, one of which shall contain public and the other confidential information.

Interested parties, their representatives and their counsel, duly accredited for the purpose, shall be entitled, at any stage of the proceedings, to examine, read or copy any document or item of evidence in the record and to request certification thereof, with the exception of confidential information, which shall be accessible only to the investigating authority and to the party that supplied the information.

Such information may not be disclosed during the investigation process.

Once the investigation has been concluded, anyone may access the file containing public information and may request the permission of the investigating authority to photocopy it.

**ARTICLE 18. (Confidentiality)** Pursuant to the Agreement and more specifically the domestic legislation of each State Party, access to information regarded as confidential shall be restricted to the party that supplied the information and the investigating authority.

Any information which is by nature confidential, for example because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon the interested party that supplied the information or upon a third party from whom that interested party acquired the information, shall, upon good cause shown, be treated as such by the investigating authority.

If the investigating authority finds that the request is not warranted and the interested party is either unwilling to make the information public or to authorize its disclosure in generalized or in summary form, the investigating authority may disregard such information unless it can be demonstrated satisfactorily from appropriate sources that the information is correct.

Any interested party providing confidential information shall furnish a non-confidential summary thereof or state the reasons why it is not susceptible of summary.

Non-confidential summaries of information regarded as confidential shall be sufficiently explicit so that the other interested parties have a clear understanding of the information supplied where such information is relevant, for example graphs showing data in percentage terms and a generic explanation of the data provided, *inter alia*.

**ARTICLE 19. (Investigative powers)** The investigating authority may request any kind of information, including technical opinions, from the various departments of the public administration, which shall provide it as rapidly as possible. It may also request any advice it considers relevant and any steps to ascertain the alleged facts.

**ARTICLE 20. (Application and duration of provisional measures)** If evidence exists to justify the application of a provisional measure, the investigating authority shall recommend such measure to



the Minister or Secretary, who may impose it by means of a resolution if the following prerequisites are fulfilled:

- (a) If the resolution initiating the investigation has been issued and published in accordance with the provisions of these Regulations;
- (b) if there has been an affirmative preliminary determination of evidence showing an increase in the volume of imports, serious injury or threat of serious injury, and the causal link between the two, in accordance with the Agreement;
- (c) if critical circumstances exist where delay would cause damage to the domestic industry which it would be difficult to repair; and
- (d) if such measures are necessary to prevent serious injury to a domestic industry.

The duration of the provisional measure shall not exceed 200 days and shall be applied in accordance with the provisions of the Agreement.

**ARTICLE 21. (Nature of provisional measures)** Provisional measures shall take the form of increased duties, guaranteed by a security, which shall be promptly refunded if subsequent investigation does not determine that increased imports have caused or threaten to cause serious injury to a domestic industry.

**ARTICLE 22. (Notification and consultations)** Before adopting a provisional measure, the State Party shall notify the measure to the WTO Committee on Safeguards. Once the measure has been imposed, the authorities of the State Party shall hold consultations with WTO Members having a substantial interest in the measure.

A resolution adopting a provisional measure shall be notified to the interested parties within ten days from its date of publication.

**ARTICLE 23. (Verification of information)** The investigating authority may, at any time during the course of the investigation, conduct such verification visits as it may consider relevant.

The investigating authority shall gather information as it deems necessary and, where it considers it appropriate, shall examine and verify information from the interested parties so as to confirm its authenticity.

The investigating authority may conduct verification visits in other countries as required, subject to the agreement of the firms concerned and provided that there is no objection on the part of the government of the country in question, which shall be officially informed thereof. As soon as agreement has been obtained from the firms concerned, the investigating authority shall notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates proposed.

Prior to the visit, the firms shall be advised of the general nature of the information to be verified, though this should not preclude requests during the visit for further details to be provided in the light of the information obtained.

**ARTICLE 24. (Public hearing)** The purpose of public hearings shall be to allow the interested parties the opportunity orally to question or rebut the opposing parties with respect to the information and evidence submitted before the investigation authority, so as to enable it and the other interested parties to request further explanations or specific clarifications, as well as to afford interested parties

the opportunity to submit their views, *inter alia*, as to whether or not the application of the safeguard measure would be in the public interest.

The investigating authority shall notify interested parties of the holding of a public hearing fifteen working days in advance. The public hearing shall be scheduled in good time and shall conclude the evidentiary period.

**ARTICLE 25. (Submissions)** After the evidentiary period has concluded with the public hearing, interested parties shall have fifteen days in which to present to the investigating authority submissions in writing in addition to those made at the public hearing.

**ARTICLE 26. (Withdrawal from the investigation)** The applicant may withdraw from the investigation at any time by providing its reasons in writing.

If an application for withdrawal is made after the initiation of the investigation, the investigating authority shall notify the interested parties and the WTO Committee on Safeguards of the withdrawal, whereby the investigation shall be deemed closed. The investigating authority may continue the investigation only if, within a period of 30 days of the notification, domestic producers expressly supporting continuation of the investigation account for at least 25 per cent of the domestic industry.

**ARTICLE 27. (Conclusion of the investigation)** The investigating authority shall complete the investigation and issue a final technical opinion. Within three working days thereafter it shall submit the record together with the technical study and relevant recommendations to the Minister or Secretary.

Within ten working days of receipt, the Minister or Secretary shall declare the investigation concluded and issue the final resolution, taking into consideration both the record and the recommendations of the investigating authority and public interest criteria.

**ARTICLE 28. (Final resolution)** The resolution concluding the investigation may be issued only once all steps have been taken to ensure an objective decision. The resolution may be of two kinds:

- (a) It may authorize the application of a measure; or
- (b) it may declare that the measure should not be applied and, where appropriate, revoke a provisional measure that has been adopted.

**ARTICLE 29. (Requirements of the final resolution)** The resolution authorizing the application of a definitive measure shall contain:

- (a) The reasons and justification therefor;
- (b) determination of the volume and increase of the imports under investigation and the conditions in which they were made;
- (c) affirmative determination of serious injury caused or threatened to the domestic industry and the causal relationship with the imports under investigation;
- (d) nature of the measure established;
- (e) expected duration of the measure; and

- (f) timetable for the phasing-out of the measure.

**ARTICLE 30. (Consultations and compensation)** Before imposing or extending a definitive safeguard measure, a period of 30 days shall be granted for consultations with WTO Members having a substantial interest.

For the purposes of granting compensation to a WTO Member or Members whose exports are affected by the imposition of the measure, the executive power or body of the State Party may agree to any appropriate measure of compensation provided for in its domestic legislation.

States Parties shall take account of the commitments entered into in the framework of Central American economic integration.

**ARTICLE 31. (Notification of the final resolution)** The final resolution shall be notified to the interested parties and to the WTO Committee on Safeguards within ten days of its publication.

**ARTICLE 32. (Duration of safeguard measures)** Measures imposed in accordance with these Regulations shall be of an exceptional and temporary nature, and shall be in force only as long as necessary to prevent or redress the serious injury which caused them to be applied, and to facilitate adjustment.

The period of application of the measure shall not exceed four years, unless it is extended in conformity with the provisions of the Agreement.

**Article 33. (Imposition of a safeguard measure)** Resolutions imposing, modifying or eliminating provisional or definitive safeguard measures shall be put into force in accordance with the domestic law of each State Party.

**ARTICLE 34. (Causal link)** For a safeguard measure to be adopted, there must be a causal link between the imports under investigation and the serious injury or threat of serious injury to the domestic industry.

The determination referred to in the preceding paragraph shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the product at issue and serious injury or threat of serious injury. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

**ARTICLE 35. (Transmittal to the Council)** The investigating authority shall transmit to SIECA a copy of resolutions for the application of provisional and definitive safeguard measures, where these involve increased duties, and of resolutions amending them, within not more than ten days of their publication, in order that SIECA may convene the Council of Ministers so that it may be apprised of and approve the measures adopted.

**ARTICLE 36. (Suspension of the investigation)** On the proposal of the investigating authority, the Minister or Secretary may suspend a provisional measure that has been adopted and terminate the investigation at any stage, when there are sufficient grounds for doing so. In that case, the Minister or Secretary shall issue the corresponding resolution, which shall be notified to the interested parties within ten days of its publication.

**ARTICLE 37. (Review of the measure)** A safeguard measure that has been adopted may be reviewed, at the request of a party or ex officio, at any time during its application, in accordance with the provisions of the Agreement.

**ARTICLE 38. (Publication)** Resolutions in respect of the initiation of an investigation and the application of provisional safeguard measures and the final resolution shall be published once only, at the cost of the interested party, in one of the daily newspapers with national circulation, at the discretion of the investigating authority, and in the Official Journal of the relevant State Party and, when being put into force, in the Official Journal of the Central American Integration System.

**ARTICLE 39. (Remedies)** The remedies provided for in the domestic legislation of each State Party shall lie against resolutions issued by national authorities.

**ARTICLE 40. (Safeguard measures against a developing country)** Safeguard measures against a product originating in a developing country shall be imposed only in conformity with the requirements and conditions of the Agreement.

### **CHAPTER III**

#### **FINAL PROVISIONS**

**ARTICLE 41. (Amendments to the Regulations)** The Council of Ministers has responsibility for amending the provisions of these Regulations at the request of the States Parties or SIECA.

Each State Party shall submit a semi-annual report to the Executive Committee for Economic Integration, through SIECA, on the implementation of this instrument.

**ARTICLE 42. (Calculation of time-limits)** Unless otherwise specified, the time-limits established in these Regulations shall be calculated in calendar days. Where the time-limit falls on a non-working day it shall be extended to the following working day.

**ARTICLE 43. (Notifications)** As required by these Regulations and the Agreement on Safeguards, the investigating authority shall notify procedural actions to interested parties having information in the record and shall continue to do so unless a party requests to be excluded from the process.

Where in the course of the investigation process the investigating authority is apprised, either ex officio or at the request of a party, of a new interested party, it shall invite that party to participate in the current stage of the proceedings.

Notifications from the investigating authority to the interested parties may be sent directly by fax, electronic mail, courier, or any other communication medium as may allow confirmation of receipt.

**ARTICLE 44. (Suppletive application)** In cases not covered by these Regulations, States Parties may apply on a supplementary basis the provisions and principles of Central American integration, the provisions of public international law, and the general principles of law.

**ARTICLE 45. (Epigraphs)** The epigraphs preceding the Articles of these Regulations are exclusively indicative and therefore have no effect on their interpretation.

**ARTICLE 46. (Repeal clause)** Upon the entry into force of these Regulations, the Central American Regulations on Safeguard Measures adopted by Resolution No. 19-96 (COMRIEDRE IV) of 22 May 1996, as well as any other prior provision inconsistent with these Regulations, shall be repealed.

---