



LAWS OF MALAYSIA

ONLINE VERSION OF UPDATED
TEXT OF REPRINT

Act 657

SAFEGUARDS ACT 2006

As at 1 December 2013

SAFEGUARDS ACT 2006

Date of Royal Assent	30 August 2006
Date of publication in the <i>Gazette</i>	31 August 2006
English text to be authoritative	P.U.(B) 359/2008
Latest amendment made by Act A1439 which came into operation on	1 September 2013

PREVIOUS REPRINT

First Reprint

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2012

LAWS OF MALAYSIA**Act 657****SAFEGUARDS ACT 2006**

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LAWS OF MALAYSIA**Act 657****SAFEGUARDS ACT 2006**

An Act to make provisions for the investigation and determination of safeguard measures on products imported into Malaysia and other matters connected therewith.

[22 November 2007; P.U. (B) 429/2007]

ENACTED by the Parliament of Malaysia as follows:

PART I**PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Safeguards Act 2006.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“threat of serious injury” means serious injury that is clearly imminent;

“Member” means a Member of the World Trade Organization;

“ASEAN” means the Association of South East Asian Nations;

“prescribed” means prescribed by regulations made under this Act;

“GATT 1994” means the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement;

“domestic industry” means—

- (a) the domestic producers as a whole of products which are like or directly competitive with the product under investigation, operating in Malaysia; or
- (b) the domestic producers operating in Malaysia whose collective output of like products or products directly competitive with the product under investigation constitutes a major proportion of the total domestic production of those products;

“Committee” means the Committee on Safeguards of the World Trade Organization;

“like products” means products that are identical or alike in all respect to the product under investigation or, in the absence of such products, another product that although not alike in all respect have characteristics closely resembling the product under investigation;

“directly competitive products” means products that are in competition despite differences in characteristics or composing materials, substitutability in terms of utility purpose or commercial competitiveness;

“product under investigation” means the class or kind of products imported or sold for importation into Malaysia that is subject of safeguard action under this Act, as determined by the Government to be appropriate for establishing the scope of action;

“serious injury” means a significant overall impairment in the position of a domestic industry;

“Government” means the Government of Malaysia;

“Minister” means the Minister charged with the responsibility for international trade and industry;

“country” includes all World Trade Organization Members and any other country or autonomous customs territory;

“officer of customs” has the same meaning as is assigned to that expression under section 2 of the Customs Act 1967 [*Act 235*];

“Agreement” means the Agreement on Safeguards of the World Trade Organization;

“interested parties” means—

- (a) the foreign exporter and producer of the product under investigation;
- (b) the importer of the product under investigation;
- (c) the government(s) of the exporting country or countries;
- (d) the domestic producers of the like products or directly competitive products;
- (e) relevant trade and business associations registered in Malaysia;

“participating interested parties” means those interested parties that have indicated their interest in participating in an investigation in accordance with section 10;

“investigating authority” means the investigating authority appointed under section 3;

“WTO” means the World Trade Organization.

PART II

THE INVESTIGATING AUTHORITY

Appointment of the investigating authority

3. The Minister may appoint and authorize an investigating authority to conduct an investigation under this Act.

Appointment of officers

4. The Minister may, from time to time, appoint and authorize such officers as are necessary to perform the functions and powers under this Act.

Protection of officers and persons acting under the Act and regulations

5. No action or prosecution shall be brought, instituted or maintained in any court against any officer or person authorized under this Act and the regulations made under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act and the regulations made under this Act, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of any such officer or person if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Duties and powers of the investigating authority

6. (1) The investigating authority shall perform such duties and functions and exercise such powers as may be provided under this Act.

(2) The conduct of investigation relating to serious injury or threat thereof shall be as prescribed.

(3) The investigating authority shall be subject to the provisions of the Act in performing the functions assigned to it under this Act.

(4) With respect to any proceedings under this Act, the investigating authority shall not disclose any information which is entitled to confidential treatment under this Act.

(5) The investigating authority may request directly from the participating interested parties, customs agents, inspection companies, forwarders, and other enterprises and entities of the public and private sectors, such data and information as the investigating authority considers relevant to the performance of its duties, functions and powers. The recipients of such requests shall provide the requested information, and such information shall be placed in the public file.

(6) The investigating authority may decide to verify the accuracy of any information submitted during an investigation or review as prescribed.

Power to delegate

7. (1) The Minister may, in writing, delegate any of his functions under this Act and the regulations made under this Act, subject to such conditions, limitations or restrictions as he thinks fit, to a person or class of persons and the person or class of persons to whom those functions are delegated may perform those functions in the manner and with the same effect as if those functions had been conferred on him or them under this Act and the regulations made under this Act.

(2) A person or class of persons purporting to act pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) A delegation made under this section may at any time be revoked by the Minister.

PART III

DETERMINATION OF SERIOUS INJURY OR THREAT OF SERIOUS INJURY AND CAUSAL LINK

Serious injury and causal link

8. (1) A determination of whether increased imports have caused or are threatening to cause serious injury to a domestic industry under this Act, all relevant factors of an objective and quantifiable nature of the product under investigation, the like products and directly competitive products of the domestic industry shall be evaluated in the prescribed manner, having a bearing on the situation of that industry.

(2) The determination referred to in subsection (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product under investigation and serious injury or threat thereof.

(3) When factors other than increased imports of the product under investigation are at the same time causing or threatening to cause injury to the domestic industry, such injury shall not be attributed to the increased imports..

Threat of serious injury and causal link

9. (1) A determination of a threat of serious injury caused by increased imports shall be based on facts and not merely on allegation, conjecture or remote possibility.

(2) In considering whether increased imports threaten to cause serious injury, the relevant factors, which shall be evaluated, shall be as prescribed.

PART IV

INVESTIGATION

Petition for initiation of investigation

10. A request for an investigation to determine whether increased imports of the product under investigation have caused or threaten to cause serious injury to a domestic industry may be initiated—

(a) upon a written petition addressed to the Ministry of International Trade and Industry by or on behalf of the domestic industry; or

(b) on the initiative of the Government.

Requirements for a petition

11. A petition under paragraph 10(a) shall include such information as prescribed.

Withdrawal of the petition before initiation of investigation

12. A petition under section 10 may be withdrawn prior to initiation of an investigation, in which case it shall be considered not to have been made.

Amendments to the petition

13. A petition requesting an investigation to be initiated may be amended subject to such conditions as the Government deems fit.

Decision to initiate investigation

14. (1) The Government may initiate an investigation, whether on the request of a domestic industry or on its own initiative, only when the Government has determined that there is sufficient evidence of serious injury or threat thereof caused by increased imports.

(2) If the Government decides to initiate an investigation under subsection (1), the Government may seek such additional information, as the Government deems necessary.

(3) Where the Government decides not to initiate an investigation, the Government shall notify the petitioner in writing of the reasons for not initiating the investigation.

(4) Where a petition has been received, the Government shall, from the date of receipt of the petition, decide whether or not to initiate an investigation within such period as prescribed. Where the petition involves complex issues, or if the Government has to seek additional information as provided for in subsection (2), the period may be extended for another period as prescribed.

Notice of initiation of investigation

15. The decision to initiate an investigation shall be notified to the Committee. Such notification shall be made immediately after the initiation of the investigation.

Publication of the notice of initiation of investigation

16. The notice of initiation shall be published by the Government.

Contents of the notice of initiation

17. The contents of the notice of initiation shall be as prescribed.

Public hearings and written arguments

18. (1) All participating interested parties shall have the opportunity in accordance with the provisions of this section—

- (a) to have public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views; and
- (b) to respond to a written and oral presentation of other participating interested parties and to submit views as to whether or not the application of a safeguard measure would be in the public interest.

(2) The procedures for a public hearing or other appropriate means shall be as prescribed.

Treatment of confidential information

19. (1) Any information which is by its nature confidential or which is provided on a confidential basis shall, upon cause shown, be treated as such by the Government. Such information shall not be disclosed without specific written permission from the party submitting the confidential information.

(2) Parties providing confidential information shall be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided.

(3) If the Government finds that a request for confidential treatment is not warranted, and if the provider of the information is unwilling to make the information public or to authorize its disclosure in generalized or summary form, the Government may disregard such information unless it can be demonstrated to the Government's satisfaction from appropriate sources that the information is correct.

Preliminary determination

20. (1) The Government shall, within such period as prescribed, make a preliminary determination regarding—

- (a) whether the product under investigation is being imported into Malaysia in such increased quantities, absolute or relative to domestic production; and
 - (b) whether under such conditions, it causes or threatens to cause serious injury to the domestic industry that produces like or directly competitive products.
- (2) If the Government makes a negative preliminary determination with regard to subsection (1), the Government shall publish a notice stating the reasons for the negative determination and—
- (a) continue the investigation; or
 - (b) terminate the investigation if the Government deems fit.
- (3) If the Government makes an affirmative preliminary determination with regard to subsection (1), the Government shall continue the investigation and publish a notice of—
- (a) the affirmative preliminary determination, stating the reasons for its determination with respect to paragraphs (1)(a) and (b); and
 - (b) the provisional safeguard measure applicable.
- (4) If the decision is to apply a provisional safeguard measure, the notice regarding the application of a provisional safeguard measure shall be as prescribed.
- (5) If the Government decides not to apply a provisional safeguard measure, the notice of negative preliminary determination shall be as prescribed.

Notification and consultation of a provisional safeguard measure

- 21.** (1) Once a decision has been taken to apply a provisional safeguard measure and before the measure takes effect, the Government

shall notify the Committee in conformity with the requirements established by the Committee.

(2) Before the measure is applied, the opportunity to be consulted as referred to in the Agreement shall be provided.

Provisional safeguard measure

22. (1) The Government may apply a provisional safeguard measure with regard to the product under investigation imported into Malaysia on or after the publication of the notice of affirmative preliminary determination where the Government determines that such measure is necessary to prevent the injury referred to in subsections 8(1) and 9(1) from occurring during the period of investigation.

(2) A provisional safeguard measure shall take the form of provisional safeguard duties guaranteed by a bond or security equal to the amount determined by the Government.

(3) The provisional safeguard measure imposed under this section shall not exceed two hundred days.

(4) If the subsequent investigation does not result in a determination that increased imports have caused or threaten to cause serious injury to the domestic industry, any bond or security shall be promptly released.

(5) The collection of any provisional safeguard duties imposed under this Act shall be conducted by an officer of customs.

Final determination

23. (1) The Government shall, within such period as prescribed, make a final determination regarding—

(a) whether the product under investigation is being imported into Malaysia in such increased quantities, absolute or relative to domestic production; and

(b) whether under such conditions, it causes or threatens to cause serious injury to the domestic industry that produces like or directly competitive products.

(2) Where the Government makes a negative final determination with regard to subsection (1), the Government shall—

(a) terminate the investigation;

(b) terminate the provisional safeguard measure applied under section 22, and release the bond or security required by such measure; and

(c) publish a notice of the negative final determination, stating the reasons for its negative determination.

(3) Where the Government makes an affirmative final determination with regard to subsection (1), the Government shall—

(a) publish a notice of affirmative final determination; and

(b) impose a definitive safeguard measure.

(4) The Government shall immediately notify the Committee if the Government determines that increased imports have caused or threaten to cause serious injury to the domestic industry. Any such notification shall conform to the requirement established by the Committee.

Notice of final determination

24. The Government shall publish a notice of final determination regarding serious injury and causal link as prescribed.

PART V

DEFINITIVE SAFEGUARD MEASURE

Determination of definitive safeguard measure

25. Where the Government determines during a provisional safeguard measure that—

- (a) the product under investigation is being imported into Malaysia in such increased quantities, absolute or relative to domestic production; and
- (b) under such conditions, it causes or threaten to cause serious injury to the domestic industry that produces like or directly competitive products,

the Government shall apply a definitive safeguard measure.

Notice of definitive safeguard measure

26. Immediately upon taking a decision regarding the application of a definitive safeguard measure, the Government shall publish a notice regarding application of a definitive safeguard measure, and such notice shall contain information as prescribed.

Notification and consultation of a definitive safeguard measure

27. (1) Immediately upon a decision to apply a definitive safeguard measure, but before such measure takes effect, the Government shall notify the Committee regarding—

- (a) the evidence of serious injury or threat thereof caused by increased imports;
- (b) the precise description of the product under investigation;
- (c) the form, level and duration of the proposed measure;
- (d) the proposed date of application of the measure; and

- (e) the proposed date of introduction, expected duration and timetable for progressive liberalization.

(2) Before a definitive safeguard measure is applied, the Government shall provide adequate opportunity for consultation with those Members having a substantial interest as exporters of the product under investigation, with a view to—

- (a) reviewing the information notified to the Committee regarding the finding of serious injury or threat thereof caused by increased imports and the proposed measure;
- (b) exchanging views about the measure; and
- (c) reaching an understanding on ways to achieve the objective to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Malaysia and the exporting Members which would be affected by such a measure. The Government may endeavour to provide any adequate means of trade compensation for the adverse effects of the measure on their trade.

(3) The Government shall notify the Council for Trade in Goods of the WTO immediately, through the Committee, of the results of the consultation.

Form and application of a definitive safeguard measure

28. (1) A definitive safeguard measure can be applied in the form of—

- (a) a safeguard duty; or
- (b) a quota on imports; or
- (c) a safeguard duty and a quota on imports.

(2) Subject to section 34, any definitive safeguard measure under paragraphs (1)(a), (b) and (c) shall be applied to all imports of the

product under investigation, irrespective of source, entered on or after the date on which the measure takes effect.

Administrative matters

29. (1) Any petition to be submitted under Part IV shall be submitted to the Ministry of International Trade and Industry.

(2) Subject to the provisions of this Act, any action to be conducted or taken under this Act shall be conducted or taken by any officer or person authorized in writing in that behalf by the Minister.

(3) Any finding of an investigation, whether for the purpose of a preliminary or final determination, or a review, under this Act, shall be forwarded to the Minister.

(4) The Minister shall decide and such decision shall be final.

(5) The Minister shall make a recommendation to the Minister of Finance to impose a definitive safeguard measure.

(6) The implementation of a definitive safeguard measure in the form as provided in subsection 28(1) shall be conducted by an officer of customs.

(7) If any question arises as to whether any particular product is or is not included in any notification given under this Act, such question shall be referred to the investigating authority who shall make a decision on the matter.

Transshipment

30. In cases where products are not imported into Malaysia directly from the country of origin, but are exported to Malaysia from an intermediate country, the provisions of the Act shall be fully applicable and the transaction, for the purposes of this Act, shall be regarded as having taken place between the country of origin and Malaysia.

Customs clearance not to be hindered

31. Any investigation conducted under this Act shall not hinder procedures for customs clearance.

Application of the Customs Act 1967

32. (1) This Act shall be construed as one with the Customs Act 1967.

(2) If there is any inconsistency between the provisions of the Customs Act 1967 and the provisions of this Act, the provisions of this Act shall prevail.

Developing country Member

33. (1) Notwithstanding any other provisions of this Act, a definitive safeguard measure shall not be applied against the product under investigation originating in a developing country Member as long as its share of imports of the product concerned in Malaysia does not exceed three per cent of total imports of the product concerned, provided that developing country Members with less than three per cent import share collectively account for not more than nine per cent of total imports of the product concerned.

(2) An action taken pursuant to subsection (1) must be notified to the Committee.

Duration of a definitive safeguard measure

34. (1) A definitive safeguard measure shall be applied for a period of not more than four years unless it is extended as provided for in section 37.

(2) The total duration of a definitive safeguard measure, including the period of application of any provisional safeguard measure and

any extension thereof pursuant to section 37, shall not exceed ten years, in accordance with the provisions of the Agreement.

Liberalization of safeguard measure

35. Where the period of application exceeds one year, the measure applied shall be progressively liberalized at regular intervals during the period of application.

PART VI

REVIEW OF SAFEGUARD MEASURE

Review

36. (1) If the duration of a definitive safeguard measure, including the period of application of any provisional safeguard measure, exceeds three years, the Government applying such a measure shall review the situation not later than the mid-term of the application of the measure or increase the pace of liberalization.

(2) A notice to maintain, liberalize or withdraw a definitive safeguard measure, summarizing the results of the review, may be published.

Extension of a definitive safeguard measure

37. (1) Upon the Government's own initiative or upon duly substantiated request, an extension of a definitive safeguard measure beyond the initial period and in conformity with the procedures set out in sections 8, 9, 16, 21, 23 and 25 may be granted—

(a) if the safeguard measure continues to be necessary to prevent or remedy serious injury; and

(b) there is evidence that the industry is adjusting,

provided that the provisions of the Agreement are fulfilled.

(2) An extended definitive safeguard measure shall not be more restrictive than at the end of the initial period of application. During the extension period, the measure shall continue to be progressively liberalized in accordance with the schedule published in a notice to extend a definitive safeguard measure.

(3) In extending a definitive safeguard measure exceeding three years, the Government shall endeavour to maintain a substantially equivalent level of concessions and other obligation to that existing under GATT 1994 between Malaysia and the exporting Members, which would be affected by such measure.

(4) The requirements pertaining to notification to the Committee and to the WTO Council for Trade in Goods as provided in subsections 21(1), 23(4) and 27(3), and the requirements pertaining to consultations with those Members having a substantial interest as exporters of the product concerned as provided for in subsection 27(2) shall apply to any extension of a safeguard measure.

Notification to extend

38. Once a decision has been taken to extend the safeguard measure, the Government shall notify the Committee.

PART VII

REAPPLICATION OF A SAFEGUARD MEASURE

Reapplication

39. (1) No new safeguard measure shall be applied for a period of at least two years to imports of a product, which were the subject of a definitive safeguard measure.

(2) Notwithstanding the provisions of subsection (1), a definitive safeguard measure with a duration of hundred and eighty days or less

may be applied to the imports of a product under investigation which was the subject of an earlier safeguard measure if—

- (a) at least one year lapsed since the date of imposition of the earlier safeguard measure on the imports of that product; and
- (b) such a safeguard measure has not been applied on the same product more than twice in the five year period immediately preceding the date of introduction of the measure.

PART VIII

MISCELLANEOUS

International obligations

40. This Act shall be applied in conformity with the obligations of Malaysia under the Agreement Establishing the World Trade Organization, done at Marrakesh, on 15 April 1994, including the GATT 1994, and the Agreement on Safeguards.

Bilateral safeguards

40A. (1) Nothing in this Act shall prevent the Government from initiating safeguard investigation and imposing safeguard measure in accordance with the terms and conditions agreed upon in a trade agreement entered into by the Government.

(2) The Minister shall prescribe the terms and conditions of the safeguard investigation and safeguard measure for the purpose of subsection (1).

Regulations

41. The Minister may make such regulations in respect of any matter to be prescribed and such other regulations as are necessary or

expedient to give full effect to or for carrying out the provisions of this Act.

Publication of notices

42. All notices required to be published under this Act shall be published in the *Gazette*.

LAWS OF MALAYSIA**ACT 657****SAFEGUARDS ACT 2006**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A1439	Safeguards (Amendment) Act 2012	01-09-2013

LAWS OF MALAYSIA**ACT 657****SAFEGUARDS ACT 2006**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
28	Act A1439	01-09-2013
40A	Act A1439	01-09-2013
