



Trade Remedies – Global safeguards factsheet

What is a safeguard?

A safeguard measure is an "emergency action" taken where a surge of imports causes, or threatens to cause, serious injury to a domestic industry. They can be in the form of tariffs, tariff-rate quotas (TRQs), quotas, or other potential measures.

What is the World Trade Organization (WTO) Agreement on Safeguards?

The [WTO Agreement on Safeguards](#) (Safeguards Agreement) provides a framework for the application of safeguard measures under Article XIX of [General Agreement on Tariffs and Trade \(GATT\) 1994](#) (Article XIX).

Under the Safeguards Agreement, safeguards must:

- be temporary, emergency actions taken against fairly traded imports;
- in-principle apply to all imports irrespective of source, however there are avenues for some exclusions (for example, for certain developing countries or specific free trade agreement partners);
- be applied only to the extent necessary to prevent or remedy serious injury and to help the industry concerned to adjust; and
- be progressively liberalised while in effect.

All elements of the Safeguards Agreement and Article XIX of the GATT must be considered and met for a WTO Member to apply a safeguard measure.

The elements are:

1. as a result of: (i) unforeseen developments, and (ii) the effect of tariff obligations under the WTO
2. a product is being imported in such increased quantities
3. as to cause or threaten to cause
4. serious injury
5. to the domestic industry
6. producing like or directly competitive products.

What do 'unforeseen developments' and 'the effect of tariff obligations' mean in this context?

An investigating authority must demonstrate that a product has been imported in increased quantities as a result of unforeseen developments and the effect of tariff obligations of the WTO Member concerned. Broadly, 'unforeseen developments' means an event, fact, or circumstance that emerges or comes to light, including a new stage in an evolving situation, which was not anticipated or expected. The investigating authority needs to explain why the circumstances identified were unforeseen when the relevant GATT/WTO concessions or obligations were made. Investigating authorities must demonstrate a 'logical connection' between those developments and the supposed increase in imports causing injury to domestic producers. That is, there needs to be some explanation and supporting evidence to show how the unforeseen developments have resulted in the import surges.

In terms of the effect of 'obligations', this requirement will generally be satisfied when the investigating authority identifies a WTO obligation that would have prevented it from raising tariffs on the product in question. Generally, a logical connection between the obligations and increased



imports are proven once there is evidence that the importing Member has tariff obligations relating to the relevant product.

What is considered an increase in imports?

The increase in imports must be **recent, sudden, sharp and significant**, both quantitatively and qualitatively, to cause or threaten to cause **serious injury**.

What are 'serious injury' and 'threat of serious injury'?

'Serious injury' is a significant overall impairment in the position of a domestic industry. This is a higher bar than the 'material injury' test used in anti-dumping and countervailing (anti-subsidy) investigations. The threat of serious injury is a threat that is clearly imminent as shown by facts, and not based on mere allegation, conjecture or remote possibility.

Article 4.2(a) of the Safeguards Agreement provides the factors that must be analysed by an investigating authority in determining whether there is serious injury or threat of serious injury. This list of factors is the minimum requirement and is not exhaustive. All factors of an 'objective and quantifiable nature' having a bearing on the situation of the domestic injury need to be examined.

How is causation demonstrated?

To determine causation, an investigating authority must demonstrate, based on objective evidence, the existence of a causal link between the increased imports of the product concerned and serious injury or threat thereof. The investigating authority must not attribute injury to the increased imports that is due to other factors.

What is considered the domestic industry producing like or directly competitive products?

'Domestic industry' refers to the producers as a whole of the like or directly competitive products operating within the territory of a WTO Member, or which constitute a major proportion of the total domestic production of those products. Producers are those that grow or manufacture an article – those that bring a thing into existence. Relevantly, input products can only be included in defining the 'domestic industry' if they are like or directly competitive with the end-products.

When is a safeguard measure applied?

A safeguard measure can only be imposed after a full investigation by a competent authority, which is currently the [Productivity Commission](#) in Australia. If a positive finding is made, the recommendations are presented to Parliament by the Treasurer and a global safeguard measure may be applied, subject to a decision by the Government. The Government can decide not to apply a safeguard measure, even if the Productivity Commission makes a positive determination. If a negative finding is made, the findings will still be published, and the report will still be tabled in Parliament.

How long does a safeguard investigation last?

A safeguard investigation typically takes six-to-eight months, as set out in the terms of reference.

What is a provisional measure?

Under critical circumstances where, during the safeguard investigation, delay would cause damage that would be difficult to repair, provisional measures may be imposed based on an accelerated report that finds there is clear evidence that increased imports have caused or threaten to cause serious injury. Provisional measures must be in the form of a non-discriminatory tariff and may be kept in place for a maximum of 200 days. The period of application of any provisional measure must be included in the total period of application of a safeguard measure. If the investigation does not confirm the serious injury or threat thereof, the duties collected under the provisional measure must be refunded.



How can industry seek a safeguard measure?

An Australian industry wishing to activate Australia's safeguard procedures should write to the Minister for Trade and Tourism, the relevant portfolio Minister responsible for the product involved, or the Treasurer. This should be in the form of a written application requesting that an investigation take place. If the Australian Government decides to initiate a safeguard investigation, the Treasurer will refer it to the Productivity Commission.

What types of information are needed in a safeguard application?

Safeguard measures must be based on clear evidence, not just allegations. An application should include background information on the domestic industry, including known producers, as well as relevant information on the product and relevant importers.

Information and data to support an application for a safeguard investigation may usefully include:

- details of the applicant/s (i.e. name, address, ownership structure)
- description of the imported products, including tariff classification
- list of domestic producers
- list of importers
- data on domestic production (i.e. value and volume)
- evidence of all the WTO legal elements outlined above, including:
 - a. data on imports (i.e. value and volume, demonstrating a surge of imports)
 - b. data and quantitative evidence of the serious injury/threat of serious injury (i.e. all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry – in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment)
 - c. evidence of a causal link between increased imports and serious injury
- information on any other relevant factors that may be impacting the sector and domestic producers, beyond imports
- consideration of whether a safeguard measure would be in the broader public interest.

What happens after an application is submitted?

Once an application is received, the Government will decide whether to initiate an investigation. If the Government decides to initiate an investigation, terms of reference are then drafted jointly between the Minister for Trade and Tourism and the Treasurer, in consultation with the relevant portfolio Minister. The investigation is formally initiated when the Treasurer refers the terms of reference to the Productivity Commission.

If the government initiates a safeguard investigation, the Productivity Commission may request further information from applicants to assist in its assessment. The Productivity Commission is also able to compel the provision of documents and attendance at public hearings to obtain information relevant to an inquiry.

How long does a safeguard measure last?

A safeguard measure can only be imposed for a maximum of four years. However, a measure can be extended for a further four years in certain circumstances (and for up to another two years beyond that by developing country WTO Members only). The total duration can never exceed eight years (or



ten years for developing country members), and the measure must be progressively liberalised over time.

WTO consultation requirements

There are also specific consultation requirements with interested parties in the investigation and any resulting measure, including trading partners (some of these are outlined in Articles 5, 8 and 12 of the Safeguards Agreement).

How does a safeguard measure differ from an anti-dumping or countervailing duty measure?

Safeguard measures, unlike anti-dumping and countervailing duties, are applied to protect a domestic industry from an increase in imports causing or threatening to cause serious injury, regardless of whether the imports are “fairly” traded or if there are any potential “unfair” trade practices at play such as dumping or subsidisation.

Below are some of the key differences between safeguards and anti-dumping measures:

Aspect	Safeguards	Anti-Dumping and Countervailing
<i>Nature of response</i>	Emergency response to recent, sudden, sharp, significant, unforeseen surge in imports [can be fair trade]	Response to dumping or subsidisation [unfair trade]
<i>Scope of application</i>	Applies to imports from <u>all</u> sources	Applies to imports from specified countries/exporters
<i>Injury test</i>	' <u>Serious</u> injury'	' <u>Material</u> injury'
<i>Available remedies</i>	Tariffs, TRQs, quantitative restrictions, or other measures	Tariffs, price undertakings
<i>Competent authority</i>	Productivity Commission	Anti-Dumping Commission
<i>Exporting country rights</i>	Exporting countries entitled to suspend 'substantially equivalent concessions' (typically after three years)	Exporting countries not entitled to compensation

Consideration of public interest

A safeguard investigation must provide an opportunity or forum for interested parties to make submissions on whether a safeguard measure would be in the public interest.

The processes of the Productivity Commission are conducted transparently. Inquiries conducted by the Productivity Commission give the opportunity for all points of view in the community to be heard and considered. All individuals, firms, groups and organisations with an interest can participate in the inquiry.

The Productivity Commission is also required to give reasonable notice to the public of the commencement of an inquiry and of any public hearings it conducts within an inquiry (sections 12 and 14 of the *Productivity Commission Act 1998* refer).

Consequences of a safeguard action

When imposing safeguard measures, countries should endeavour to maintain ‘substantially equivalent concessions’ with other WTO Members (including by consulting with affected Members). For example, if Australia imposes a safeguard on a product, countries that export that product to Australia are entitled to suspend ‘substantially equivalent’ tariff concessions (such as temporarily raising tariffs) on



products from Australia as a form of trade compensation. The right of suspension typically cannot be exercised for the first three years that a safeguard measure is in place. While this is normally negotiated between the parties, affected WTO Members may proceed unilaterally if no agreement is reached.