

SAFEGUARD REGULATIONS

2018

PART 1: GENERAL RULES

1. Article 1: Basis

These Regulations are enacted in light of Section 94 of the Trade Remedies Act, 2018.

2. Definitions

“bound duty” means the maximum customs duty that Seychelles may apply to a subject product in terms of its concessions under the WTO;

“Committee” means the Committee established in terms of section 4 of the Trade Remedies Act;

“extension” means the additional period provided by the Committee to a party showing good cause to respond to a request for information or clarification or to comment on a document and applies only to the party to which an extension was granted;

“facts available” means the information that is available to the Committee at the time of making a determination, whether preliminary or final, and which has been verified or is verifiable;

“good cause” for an extension of the submission of information does not include merely citing insufficient time to complete a response;

“investigation”, unless otherwise specified, includes “review”;

“investigation period” means the period for which it is assessed whether the domestic industry experienced serious injury and whether there has been an increase in imports;

“negligible” volume means that the volume of imports from a developing country represents less than 3 per cent of the total imports of the subject product into Seychelles, unless imports from all developing countries each representing less than 3 per cent of total imports collectively account for more than 9 per cent of the total imports of the investigated product into Seychelles;

“price disadvantage” is the extent to which the price of the imported product is lower than the unsuppressed selling price of the like product produced by the Seychelles industry, as measured at the appropriate point of comparison;

“price depression” takes place where the Seychelles industry’s ex-factory selling price decreases during the investigation period;

“price suppression” takes place where the cost-to-price-ratio of the Seychelles industry increases, or where the Seychelles industry sells at a loss during the investigation period or part thereof;

“price undercutting” is the extent to which the price of the imported product is lower than the price of the like product produced by the Seychelles industry, as measured at the appropriate point of comparison;

“related parties” are parties deemed to be related for purposes of an anti-dumping investigation, and sales may be considered not to be at arm’s length, if –

- (a) one directly or indirectly owns, controls or holds five per cent or more of the equity shares of the other;
- (b) one has the power to directly or indirectly nominate or appoint a director to the management of the other;
- (c) one is an officer or director of the others business;
- (d) they are legally recognised partners in business;
- (e) one is employed by the other;
- (f) they are both directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person;
- (h) they appear to be related by virtue of their conduct;
- (i) they are blood relatives or are related by marriage, common-law partnership or adoption; or
- (j) if their relationship is otherwise of such a nature that trade between them cannot be regarded to be at arm's length;

“serious injury” is the significant overall impairment of the domestic industry, as defined in Section 3 of the Trade Remedies Act;

“subject product” is the product imported and that forms the subject of the safeguard investigation;

“threat of serious injury” means a threat that actual serious injury is clearly foreseen and imminent and shall be based on facts and not merely on allegation, conjecture or remote possibility;

“unsuppressed selling price” is the price at which the Seychelles industry would have been able to sell the like product in question in the absence of the increased imports, and can be determined with reference to –

- (a) the expected or required return of the Seychelles industry for the like product;
or
- (b) the profit margins of the industry for the like product before the significant increase in imports; or
- (c) the prices obtained for the like product by the industry directly before the before the significant increase in imports; or
- (d) any other reasonable basis;

“WTO” means the World Trade Organization.

3. Like or directly competitive product

(1) In determining whether the product is like or directly competitive, as defined in section 3 of the Trade Remedies Act, with the subject product, the Committee may consider –

- (a) the raw materials and other inputs used in producing the products;

- (b) the production process;
- (c) physical characteristics and appearance of the product;
- (d) the end-use of the product;
- (e) the substitutability of the product with the product under investigation;
- (f) tariff classification;
- (g) competition between the domestic and imported products; and
- (h) any other factor proven to the satisfaction of the Committee to be relevant.

No one or several of these factors can necessarily give decisive guidance.

4. Domestic industry

- (1) Other than investigations self-initiated by the Committee, any application for safeguard action shall be brought by or on behalf of the Seychelles industry.
- (2) Where a Seychelles producer is –
 - (a) related to the importer, exporter or the foreign producer; or
 - (b) itself an importer of the products under investigation,
 the term “domestic industry” may be interpreted as referring to the rest of the Seychelles producers.
- (3) An application shall be regarded as brought by or on behalf of the domestic industry if –
 - (a) at least 25 per cent of the Seychelles producers by domestic production volume support the application; and
 - (b) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application.
- (4) In the case of industries involving an exceptionally large number of producers, the Committee may determine support and opposition by reference to the largest number of producers that can be reasonably included in the investigation or by using statistically valid sampling techniques based on the information available to the Committee at the time of its finding.
- (5) If a Seychelles producer withdraws the application or its support thereof after the investigation has been initiated, the Committee may -
 - (a) terminate the investigation; or
 - (b) disregard the withdrawal of support and continue with its investigation as if all requirements in subsections 1, 2 and 3 have been met.

5. Confidentiality

- (1) If a person makes a claim in terms of section 63 of the Act, the Investigation Authority must-
 - (a) in the case of information claimed to be confidential by nature, determine whether the information satisfies the requirements of the definition of “information that is by nature confidential” set out in section 3 of the Act; or
 - (b) in the case of other information, determine whether the information should be recognised as confidential.
- (2) A person making a claim in terms of subsection (1) must support that claim with-
 - (a) a written statement in the prescribed form-
 - (i) explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of “information that is by nature confidential” in section 3 of the Act; or
 - (ii) motivating, in the case of other information, why that information should be recognised as confidential; and
 - (b) either-
 - (i) a written abstract of the information in a non-confidential form; or
 - (ii) a statement setting out the reasons why it is not possible to comply with subparagraph (i).
- (3) If, upon considering a claim in terms of subsection (1)(a), the Investigation Authority determines that the information is not, by nature, confidential-
 - (a) it must invite the claimant to submit a further motivation for the information to be recognised as otherwise confidential; and
 - (b) if the claimant submits such a motivation within the prescribed time, the Investigation Authority must reconsider the claim.
- (4) Upon making a final determination in terms of subsection (1) or (2), the Investigation Authority -
 - (a) must notify the claimant in writing of its determination; and
 - (b) shall, if it has determined that the information is not, by nature, confidential or should not be recognised as being otherwise confidential, return the information to the claimant and advise it that the information will not be considered in determining the merits of the investigation.

(5) A claimant affected by a determination of the Investigation Authority in terms of subsection (3) may appeal against that determination to the Tribunal.

(6) Interested parties providing confidential information in any correspondence shall furnish non-confidential summaries thereof. These summaries shall –

- (a) indicate in each instance where confidential information has been omitted;
- (b) indicate in each instance the reasons for confidentiality; and
- (c) be in sufficient detail to permit other interested parties a reasonable understanding of the substance of the information submitted in confidence.

(7) The requirement to provide non-confidential versions of information submitted in confidence shall not apply to any applications or correspondence prior to initiation of an investigation, except as it relates to the final properly documented application accepted for initiation of an investigation.

(8) Confidential information shall normally be summarised in a non-confidential version by the use of indices, the use of ranges, or a general description of the information submitted in confidence.

(9) In exceptional circumstances, where information does not permit summarisation reasons shall be provided why the information cannot be summarised.

(10) Unless indicated otherwise, the non-confidential version shall be submitted within the time limit set forth for the submission of the confidential information.

(11) The following list indicates “information that is by nature confidential” as per section 3 of the Trade Remedies Act:

- (a) management accounts;
- (b) financial accounts of a private company;
- (c) actual and individual sales prices;
- (d) actual costs, including cost of production and importation costs;
- (e) actual production and sales volumes;
- (f) information, the release of which could have serious consequences for the person that provided such information; and
- (g) information that would be of significant competitive advantage to a competitor; provided that the party submitting such information indicates it to be confidential.

(12) Where an application is submitted by an industry consisting of two or more producers each submitting information, a non-confidential submission shall be submitted in respect of both the consolidated application and each party's information.

(13) Where three or more parties make a joint application, the industry figures shall not be regarded as confidential.

(14) All correspondence not clearly indicated to be confidential shall be treated as non-confidential.

(15) The Investigation Authority shall disregard any information indicated to be confidential that is not accepted as confidential by it under paragraph (3) or that is not accompanied by a proper non-confidential version.

(16) Where the Investigation Authority decides to disregard the information, such information shall be returned to the party that submitted it. Within a time-limit set by the Investigation Authority that party may:

- (a) amend the non-confidential version in accordance with the requirements set forth in this section;
- (b) desist from submitting the information concerned;
- (c) authorise the inclusion of the information concerned into the non-confidential file; or
- (d) demonstrate to the Investigation Authority's satisfaction, from appropriate sources, that the information is correct.

(17) Where information is returned to an interested party as provided for under subsection (16) of this article, such information shall be redacted from both the investigation and the public files.

(18) Except as provided in section 65(2) of the Act, the Investigating Authority and the Committee shall maintain full confidentiality of information obtained while performing and after leaving the official duties and will not disclose the information, and no information submitted in confidence shall be disclosed without specific permission of the party submitting it.

(19) The provisions of this Article shall not preclude the disclosure of

- (a) general information by the Investigating Authority, and in particular of the reasons on which decisions taken pursuant to the Act are based; or
- (b) the evidence relied on by the Investigating Authority and the Committee insofar as is necessary to explain those reasons in decisions or review proceedings;

provided that such disclosure shall take into account the legitimate interests of the parties concerned that their business secrets should not be divulged.

6. Representation

(1) Should any of the interested parties wish to be represented by an outside party, the interested party must provide the Committee with a letter of appointment of its representative, detailing the identity of the representative and the scope and duration of the representation.

(2) Should any interested party wish to terminate a representation indicated in subsection (1), such party must provide the Committee with a letter to this effect, indicating the effective date of such termination.

(3) Other than with reference to the information in subsection (2), once an interested party has appointed a representative all communication between the Committee and the interested party will take place through the appointed representative.

7. Unforeseen developments

(1) It must be shown that the increase in imports is the result of one or more unforeseen developments.

(2) An unforeseen development shall be understood to mean an event or development that was not foreseen when Seychelles concluded its WTO concessions.

8. WTO obligations

No safeguard measure may be imposed unless the Committee and the Minister have considered evidence of obligations or concessions, including tariff concessions, Seychelles undertook under the WTO.

9. Injury

(1) Any reference to injury shall include actual serious injury or a threat of serious injury.

(2) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of the Act and these Regulations, the Committee shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular,

- (a) the rate and amount of the increase in imports of the product concerned in absolute terms and relative to production in Seychelles;
- (b) whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of Seychelles, or whether the effect of such imports is otherwise to depress prices to a significant degree; or prevent price increases, which otherwise would have occurred, to a significant degree;
- (c) the share of the domestic market taken by increased imports; and

- (d) changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.
- (3) The information in subsection (3) shall be considered regardless whether the injury inquiry relates to actual serious injury or to a threat of serious injury, and where a specific factor is not relevant, this shall be specifically addressed.
- (4) The effect of the increased imports shall be assessed in relation to the domestic production of the like or directly competitive product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits.
- (5) In the event that the separate identification of production envisaged in subregulation (4) is not possible, the effects of the increased imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like or directly competitive product, for which the necessary information can be provided.
- (6) A determination of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility, and the change in circumstances which would create a situation in which the increase in imports would cause serious injury must be clearly foreseen and imminent.
- (7) With respect to cases where injury is threatened by increased imports, the application of safeguard measures shall be considered and decided with special care.

10. Causality

- (1) It must be demonstrated that the increased imports are causing or threatening serious injury to the domestic industry.
- (2) The demonstration of a causal relationship between the increased imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Investigating Authority and the Committee.
- (3) In considering whether there is a causal link between the increased imports and the industry's injury the Committee shall consider all relevant factors, including, but not limited to:
 - (a) the amount of change in the volume of imports, whether absolute or relative to the production by the Seychelles domestic industry;
 - (b) the price undercutting experienced by the Seychelles industry vis-à-vis the imported products; and
 - (c) the market share of the imported imports.

(4) The Investigating Authority and the Committee shall also examine any known factors other than the increased imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the increased imports.

(5) Factors which may be relevant in this respect include, inter alia, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

PART 2: INVESTIGATION PROCEDURES

11. Application and merit assessment

(1) A safeguard investigation shall only be initiated upon acceptance of a written application by or on behalf of the Seychelles industry, except as provided for in subsection (4).

(2) In determining whether a complaint submitted constitutes a properly documented application the Committee shall determine whether the application includes such information as is reasonably available to the applicant relating to the required information, as specified in subsections (5) and (6).

(3) The Committee will return all applications that are not properly completed to the applicant.

(4) The Committee may initiate an investigation without having received a written application from the relevant interested party, provided if it has sufficient evidence of concessions that Seychelles undertook under the GATT 1994, an unforeseen development that led to an increase in imports, which, in turn, cause or threaten serious injury to the domestic industry producing the like or directly competitive product. A non-confidential version of the information shall be made available to all known interested parties.

(5) An application under subsection (1) shall include prima facie evidence of (a) Seychelles obligations, including tariff concessions, under GATT 1994, (b) the unforeseen developments, (c) the increase in imports, whether absolute or relative to domestic production; (d) injury, and (e) a causal link between the increased imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph.

(6) In addition to the information under subsection (5), the application shall contain such information as is reasonably available to the applicant on the following:

- (a) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant; where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers or associations of domestic producers of the like

product and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

- (b) a complete description of the subject product;
 - (c) the evolution of the volume of imports from each country of export, as well as the evolution of total imports of the subject product, over a period of at least three years; and
 - (d) information on prices at which the subject product is imported into Seychelles, or sold on the Seychelles market.
- (7) The Investigating Authority shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.
- (8) As soon as a decision is taken to initiate an investigation, the Investigating Authority shall open a public file containing
- (a) all non-confidential information submitted by all interested parties from the properly documented application onwards;
 - (b) non-confidential copies of all correspondence between the Investigating Authority or the Committee and interested parties;
 - (c) non-confidential versions of all other information obtained by the Investigating Authority or the Committee; and
 - (d) an indication of all information received in confidence.
- (9) An investigation shall not be initiated pursuant to subsection (1) unless the Committee has determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry, as required by section 4(3).
- (10) The Committee shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation.
- (11) In the event that the Committee makes a negative merit assessment it shall inform the applicant concerned accordingly and supply it with a full set of reasons for its decision.
- (12) A safeguard investigation shall not hinder the procedures of customs clearance.

12. Initiation of an investigation

- (1) An investigation shall formally be initiated through publication in the Official Gazette.
- (2) The initiation notice shall contain the information on the alleged GATT 1994 concessions, the alleged unforeseen development(s), increased imports, serious injury and causality, and shall also indicate at least the following:
- (a) the identity of the applicant;

- (b) a detailed description of the product under investigation, including the tariff subheading applicable to the product;
 - (c) the address to which representations by interested parties should be directed; and
 - (d) the time frame for responses by interested parties.
- (3) The Investigating Authority shall inform the WTO Committee on Safeguards within 7 days of the initiation of a safeguard investigation and shall supply it with a non-confidential version of the information it considered in deciding to initiate the investigation.
- (4) The Investigating Authority shall also provide the authorities of countries that have a substantial interest in the investigation with the relevant information and within the deadline indicated under subsection (3).
- (5) All parties wishing to participate in the investigation shall inform the Investigating Authority of their intention within 14 days from initiation of the investigation and the Investigating Authority and the Committee will not consider any submissions from parties that failed to adhere to this deadline, unless it has agreed otherwise in writing.
- (6) Parties indicating their interest in participating in a safeguard investigation, as provided for in paragraph (5), shall be regarded as participating interested parties.
- (7) All participating interested parties may request to be provided with a copy of the non-confidential application.
- (8) All participating interested parties shall have
- (a) 21 days from initiation of the investigation to submit any information they deem relevant to the preliminary determination;
 - (b) until 14 days before the date of the public hearing to submit any information they deem relevant to the final determination.

(9) The Committee may grant an extension to the deadline in paragraph (8) on good cause shown.

(10) The Committee may provide opportunities for upstream producers of raw materials, industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality, provided such parties have conformed to the requirements of paragraph (5).

(11) All submissions shall be made in both hard copy and in electronic format, unless the Committee has agreed otherwise in writing. Failure to comply with this provision may result in the submission being regarded as deficient.

(12) Upon prior arrangement, the public file shall be open for inspection by participating interested parties and any other person during normal office hours.

13. Technical meetings

(1) Any participating interested party may request technical meetings with the Investigating Authority during any stage of an investigation or review, provided the party indicates reasons for not relying on written submissions only.

(2) Unless good cause exists for not granting such a hearing, the requested technical hearing should take place within no more than 14 days from the request.

(3) The Committee may refuse a technical meeting if granting such meeting will unduly delay the finalisation of a preliminary or final determination.

(4) No request for a technical meeting will be considered more than 7 days, and no technical meeting will take place more than 20 days, after the Committee's essential facts report has been made available.

(5) Parties requesting a technical meeting shall provide the Investigating Authority with an agenda for, and a summary, including a non-confidential summary, of the information to be discussed at the technical meeting at the time of the request.

(6) All information presented during a technical meeting must be reduced to writing within 7 days after the meeting by the party making such presentation, failing which the Authority shall disregard that information. Where applicable, the submission shall be accompanied by a non-confidential version.

14. Public Hearings

- (1) The Committee shall host a public hearing before making a final determination.
- (2) A participating interested party may present any relevant information at the public hearing.
- (3) Parties shall inform the Committee at least 3 working days before a public hearing of the identity of their representatives who will attend the oral hearing.
- (4) Any party other than a participating interested party may only submit information pertaining to public interest at the public hearing and only if the Committee has granted that party permission to make a representation at the public hearing.
- (5) All information presented during a public hearing shall be reduced to writing within 7 days from the public hearing and a non-confidential version will be placed on the public file.
- (6) Participating interested parties shall have 7 days in which to respond to other parties' representations.
- (7) The public hearing shall be held at least 14 days before the essential facts are sent out to participating interested parties.

15. Verification of information

- (1) The Investigating Authority shall satisfy itself as to the accuracy and completeness of the information supplied by participating interested parties.
- (2) Upon initiation of an investigation, the Investigating Authority should inform domestic participating interested parties of the intention to carry out on-the-spot verifications.
- (3) The Investigating Authority may conduct such verifications at the Seychelles producers and at cooperating importers as it may deem necessary.
- (4) If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the participating interested parties and the authorities of the exporting countries should be so informed, and such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.
- (5) At least 14 days' advance notice should be given to the participating interested parties in question before the visit is made.
- (6) The participating interested parties concerned shall be advised of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

(7) In the event that a domestic producer or an importer refuses to receive a verification visit by the Investigating Authority, refuses the Investigating Authority access to relevant information or acts so as to significantly impede the investigation, the Investigating Authority may disregard the information submitted by that party.

(8) Where a party -

- (a) fails to supply relevant substantiating evidence required by investigating officers during a verification;
- (b) fails to explain any calculations contained in its submissions; or
- (c) otherwise fails to cooperate during the verification process;

the Investigating Authority may terminate the verification and may disregard any or all information submitted by the party in question. The Investigating Authority may nevertheless consider information that was properly submitted and verified.

- (9) The party to which a verification report pertains shall have 7 days to comment on
- (a) the completeness of the verification report; and
 - (b) the information to be contained in the non-confidential verification report.
- (10) The Investigating Authority will place a copy of the non-confidential verification report on the public file within 7 days of receiving the comments referred to in paragraph 10.
- (11) The Investigating Authority shall provide participating interested parties with a reasonable opportunity to comment on the verification report. The Investigating Authority may grant an extension upon good cause shown.

16. Preliminary determination

- (1) The Committee may take a preliminary determination with a view to impose a provisional safeguard duty in cases where it appears that further serious injury may be caused, or that a threat of serious injury may manifest in actual serious injury, during the course of the investigation where no provisional measure is imposed.
- (2) For the preliminary determination, the Committee shall take into consideration all information that has been supplied within the deadline provided for in paragraph (8) of section 12.
- (3) Where a participating interested party's information is incomplete or otherwise deficient by the time the investigating officers make the technical submission to the Committee, such party's information may be disregarded for purposes of the preliminary determination.
- (4) Where a preliminary finding of increased imports as a result of an unforeseen development has been made, and that such increased imports cause or threaten serious injury to the domestic industry, the Committee may request the Seychelles Customs to impose a provisional safeguard duty in terms of section 268(1) of the Customs Management Act.
- (5) The Investigating Authority shall notify the WTO Committee on Safeguards of the provisional safeguard duty, including the level and duration thereof and the basis for the decision to impose such measure, before such measure is imposed.
- (6) Public notice shall be given in the Official Gazette of any preliminary determination.
- (7) The notice referred to in subsection (6) shall include a brief summary of the product, the determinations on unforeseen developments, increased imports, injury and causal link, and the level of the provisional safeguard duty, if any.
- (8) A detailed preliminary report shall be published and shall be provided to each participating interested party within 7 days after the preliminary determination notice has been published and to all other interested parties upon request.

(9) The preliminary report shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the Committee, bearing in mind the requirements of confidentiality.

(10) All participating interested parties will receive 14 days to comment on the preliminary report or to conduct consultations with the Committee regarding the level and duration of the provisional duty.

(11) Upon good cause shown-

- (a) the Investigating Authority may grant interested parties an extension to comment on the report; and
- (b) the Committee may grant foreign governments with a significant interest in the investigation an extension to conduct consultations.

17. Essential facts

(1) The Investigating Authority shall, before a final determination is made, inform all participating interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures, regardless of whether such facts support or detract from a decision to impose definitive measures.

(2) The essential facts refer to the specific facts that underlie the Committee's final findings and conclusions in respect of the three essential elements – dumping, injury and causation – that must be present for application of definitive measures, and the disclosure shall be such as to permit an interested party to understand the basis for the decision whether or not to apply definitive measures.

(3) All interested parties will receive at least 7 days to comment on the completeness and correctness of the essential facts being considered by the Committee in its final decision.

(4) The Investigating Authority may grant participating interested parties an extension for the submission of comments on good cause shown.

18. Final determination

(1) The Committee shall take all relevant information, including comments on the essential facts, information presented at the public hearing and comments on public hearing presentations, into consideration in its final determination.

(2) Unless the determination in paragraph (a) of this subsection is negative, the final determination shall be set out in two phases:

- (a) the serious injury and causal link determinations; and
- (b) the determination on the form, level, duration and liberalisation schedule of any safeguard measure, if any.

- (3) In the event the Committee reaches a finding of serious injury or a threat thereof to the domestic industry, which is causally linked to the increased imports, it shall notify the WTO Committee on Safeguards by providing it with the relevant non-confidential information on which it based its serious injury, or threat of serious injury, and causal link determinations as soon as such findings have been made and in any event before a final determination is made on the measure, if any, to be imposed.
- (4) If the Committee proposes to apply a safeguard measure or to seek an extension of a safeguard measure, it shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting countries which would be affected by such a measure.
- (5) If the Committee proposes to apply a safeguard measure or to seek an extension of a safeguard measure, it shall provide the WTO Committee on Safeguards with the precise description of the product involved, the proposed form and level of the measure, the proposed date of introduction, the expected duration and the proposed timetable for progressive liberalisation.
- (6) The Committee shall provide the authorities of exporting countries with a significant interest in the matter a period of 21 days after the notification in subsection (5) to consult on the form, level, duration and liberalisation of any safeguard measure, as well as on any compensation to be granted to each such country.
- (7) To achieve the objective under subsection (4), the countries concerned may consult on any adequate, WTO-consistent means of trade compensation for the adverse effects of the measure on their trade.
- (8) Notwithstanding the requirement for consultations on compensation in subsection (4), granting compensation shall be suspended for a period of 3 years where
- (a) the Committee conducted the safeguard investigation in line with the requirements of Article XIX of GATT 1994 and the WTO's Agreement on Safeguard Measures; and
 - (b) the safeguard measure was imposed in response to an absolute increase in imports.
- (9) The results of any consultations held under subsection (7) shall be notified to the WTO Committee on Safeguards within 7 days of the deadline in under subsection (6), unless consultations are still ongoing, in which case the notification shall be made within 7 days from the date the consultations have been concluded.
- (10) The Committee's final determination on a definitive measure shall be made after the consultations referred to in subsection (7) and shall be in the form of a recommendation to the Minister responsible for trade.
- (11) The Minister shall have 21 days to approve, reject or amend the Committee's recommendation.
- (12) The Investigating Authority shall publish a notice in the Official Gazette to notify the Minister's final determination.

(13) The Investigating Authority shall publish a final report setting out the findings and reasoned conclusions reached on pertinent all issues of law and fact considered in its final determination, including-

- (a) a precise description of the product which is sufficient for customs purposes;
- (b) the unforeseen developments that led to the increase in imports;
- (c) the GATT 1994 obligations, including tariff concessions, that led to Seychelles deciding to opt for a safeguard measure;
- (d) an evaluation of the increased imports, absolute and relative to production in Seychelles;
- (e) considerations relevant to the injury determination;
- (f) considerations relevant to the causality determination;
- (g) considerations relevant to the public interest determination, if any;
- (h) the main reasons leading to the determination;
- (i) the basis for the level, form and liberalisation of safeguard measure determined;
and
- (j) a list of either the developing countries subject to the safeguard measure or of the developing countries exempted from the safeguard measure.

19. Safeguard measures

- (1) Safeguard measures may be applied to imports introduced into the commerce of Seychelles for the purpose of eliminating the consequent impact of the increase in imports that cause serious injury or a threat thereof to the domestic industry producing the like or directly competitive product.
- (2) No safeguard measure may be imposed where there is no bound duty on the subject product.
- (3) In critical circumstances where delay would cause damage which it would be difficult to repair, a preliminary safeguard duty may be imposed pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury.
- (4) Any provisional safeguard duty will be based on the Committee's determination of the margin of injury preliminary determined.
- (5) A provisional safeguard duty may be imposed for a period not exceeding 200 days, and subject to the requirements of paragraph (5) of section 16 .
- (6) The duration of a provisional safeguard shall be counted as part of the overall duration of a safeguard measure.
- (7) When a safeguard measure is imposed in respect of any product, such safeguard measure shall be applied in each case on a non-discriminatory basis on imports of such product from all sources, except as provided for in paragraph (25).
- (8) Where a definitive safeguard measure is applied, irrespective of the form or level thereof, any amounts paid or secured as a preliminary safeguard duty may be collected definitively.
- (9) Where a final determination is negative, any provisional safeguard duty paid shall be refunded and any bonds released in an expeditious manner, without the payment of interest.
- (10) No safeguard measure may be imposed for an original period exceeding 4 years, including the period of application of any provisional measure.
- (11) The overall duration of a safeguard measure, including any extensions, may not exceed 10 years.
- (12) A definitive safeguard measure may be applied in the form of a duty (whether ad valorem, specific or based on a reference price), a quota or a tariff quota.
- (13) Where a definitive safeguard measure is imposed in the form of a quota, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

(14) In cases in which a quota is allocated among supplying countries, the Committee may seek agreement with respect to the allocation of shares in the quota with exporting countries having a substantial interest in supplying the product concerned.

(15) Where the method in paragraph (14) is not reasonably practicable, the Committee shall allot to exporting countries having a substantial interest in supplying the product shares based upon the proportions, supplied by such countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(16) The Committee may depart from the provisions in paragraph (15) provided that consultations under paragraph (7) of section 18 are conducted under the auspices of the WTO Committee on Safeguards, and that clear demonstration is provided to such Committee that

- (a) imports from certain countries have increased in disproportionate percentage in relation to the total increase of imports of the subject product in the representative period;
- (b) the reasons for the departure from the provisions in paragraph (15) are justified; and
- (c) the conditions of such departure are equitable to all suppliers of the product concerned.

(17) The duration of any quota imposed under the conditions of paragraph (16) shall not be extended beyond a period of 4 years.

(18) The departure referred to in paragraph (16) shall not be permitted in the case of a threat of serious injury.

(19) In order to facilitate adjustment in a situation where the duration of a safeguard measure is over one year, including the duration of any preliminary safeguard measure, the measure shall progressively liberalise it at regular intervals during the period of application.

(20) If the overall duration of the measure exceeds three years, the Committee shall review the situation not later than the mid-term of the measure in line with the requirements of section 23 and, if appropriate, withdraw it or increase the pace of liberalization.

(21) For the purpose of protecting the public interest, safeguard measures imposed pursuant to this Law may be suspended by a decision of the Minister, on recommendation of the Committee, for a period of up to 12 months.

(22) Measures may only be suspended where:

- (a) market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, or where the domestic industry is temporarily unable to supply the like or directly competitive product; and
- (b) the domestic industry has been given an opportunity to comment and these comments have been taken into account.

(23) The Committee shall regularly monitor the suspension, based on information requested from relevant interested parties.

(24) Acting on a proposal from the Committee, the Minister may, at any time, reinstate the measures for the remainder of the period if the reason for suspension is no longer applicable.

(25) No safeguard measure shall be applied to imports from developing countries that represent less than 3 per cent of the total volume of imports of the subject products into Seychelles, unless developing countries each accounting for less than 3 per cent of total imports of the subject product combined represent more than 9 per cent of the total volume of such imports.

20. Extension of safeguard measures to exempted countries

(1) Where imports from a developing country whose exports have been exempted from the application of the safeguard measure on the basis of the negligible volume of imports from that country, as provided for in paragraph (25) of section 19, subsequently increase to a level higher than the negligible volume of total imports during the original investigation period, such imports shall become subject to the safeguard measure.

(2) The domestic industry or any other participating interested party may inform the Committee that imports from an exempted developing country has increased to a level higher than a negligible volume of imports during the original investigation period.

(3) The Committee shall determine whether imports have indeed increased to a level higher than the negligible volume of the total volume of imports in the original investigation period and, if affirmative, shall recommend to the Minister that the safeguard measure be immediately applied to the imports from such country for the remainder of the duration of the safeguard measure.

21. Non-application period for subsequent safeguards

(1) 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 to half that for which such measure had been previously applied, provided that the period of non-application is at least two years.

(2) Notwithstanding the provisions of paragraph (1), a safeguard measure with a duration of 180 days or less, including the period of application of any provisional safeguard duty, 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.

PART 3: REVIEWS

22. Reviews – General information

- (1) All participating interested parties from the original investigation or the last review, the governments of all exporting countries that have significant interest in the matter, and the WTO Committee on Safeguards shall be notified of the initiation of a review within no more than 7 days after such initiation.
- (2) Except where otherwise specified, the provisions of the Trade Remedies Act and these Regulations with regard to procedures and conduct of investigations, including rights of parties, as well as assessment of evidence and reasoning of determinations, shall apply *mutatis mutandis* to reviews.
- (3) Notwithstanding the provisions of paragraph (2), reviews shall consist of a single investigation phase and no preliminary determination will be made.
- (4) The notice of initiation shall be published in the Official Gazette without delay after the decision to initiate a review or refund investigation.
- (5) On the basis of the essential facts and taking into consideration the comments received from interested parties, the Investigating Authority shall prepare a technical report for the Committee's consideration.
- (6) The Investigating Authority shall submit the technical report to the Committee no later than 90 days before the end of the time limit for concluding the review.
- (7) Unless otherwise specified, half-term and extension reviews shall be concluded within 6 months of the date of initiation.
- (8) If a review is not completed within the deadline contemplated in subsection (8), the measures concerned shall expire with effect from the 6-month anniversary of the initiation of the review.

23. Half-term reviews

- (1) No half-term review is required in instances where a safeguard measure is applied for, or extended by, a period not exceeding 3 years, including the period of application of any provisional safeguard measure.
- (2) Where a safeguard measure is imposed for an initial period exceeding 3 years, including the period for which a provisional safeguard duty was imposed, the Committee shall normally ex officio initiate a half-term review through notice in the Official Gazette between 2 and 4 months prior to the half-term of the safeguard measure.
- (3) Other than as provided for in paragraph (1), should the Committee fail to initiate a half-term review prior to half-term of a measure, the safeguard measure shall lapse on the half-term anniversary of such measure.
- (4) All parties wishing to participate in the half-term review shall inform the Investigating Authority of their intention within 14 days from initiation of the investigation and the Investigating Authority will not consider any submissions from parties that failed to adhere to this deadline, unless it has agreed otherwise in writing.
- (5) Parties indicating their interest in participating in a safeguard investigation, as provided for in paragraph (4), shall be regarded as participating interested parties.
- (6) All participating interested parties shall have 45 days from initiation of the investigation to submit any information they deem relevant to the Investigating Authority.
- (7) The Investigating Authority may give an extension to the deadline contemplated in subsection (6) on good cause shown, subject to its ability to timely complete the review.
- (8) The purpose of a half-term review shall be to determine whether the measure should continue to be applied as originally decided, or whether the measure can be withdrawn or the pace of liberalisation can be increased.
- (9) The domestic industry will be required to
 - (a) submit evidence that it is in the process of adjusting; and
 - (b) substantiate the potential impact the withdrawal of the measure or increased liberalisation of the measure would have on the industry's economic performance.
- (10) Other participating interested parties may submit information relating to the maintenance, withdrawal or increased pace of liberalisation of the measure.
- (11) Should the Committee decide to hold a public hearing, this hearing will be held not more than 60 days after initiation of the half-term review and the provisions of section 14 will apply.
- (12) Acting on the Committee's recommendation, the Minister may determine that:
 - (a) the safeguard measure continues to be implemented and liberalised in line with the original determination;
 - (b) the safeguard measure be liberalised at a faster pace; or

- (c) the safeguard measure be terminated.

24. Extension reviews

- (1) The domestic industry may request an extension review to extend the duration of a safeguard measure.
- (2) The original safeguard measure may be extended only if the Committee has determined, in conformity with the procedures set out in these regulations, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that
 - (a) new consultations under paragraph (7) of section 18 have been held; and
 - (b) the necessary notifications to the WTO Committee on Safeguards have been made under section 18.
- (3) Any application for an extension review shall reach the Committee at least 6 months before the lapse of the measure.
- (4) The domestic industry's application shall include information on
 - (a) the evolution of imports since the initiation of the original investigation;
 - (b) the efforts the industry has undertaken to adjust or restructure; and
 - (c) the continued need for the safeguard measure.

- (5) Bearing in mind the requirements of paragraph (7) of section 22, an extension review shall be initiated as soon as the Committee is satisfied that it has prima facie evidence showing the need for the continued application of the safeguard measure after its scheduled lapse.
- (6) Should the Committee fail to finalise an extension review prior to lapse of the measure, the measure shall lapse on the previously indicated date and no extension review may be undertaken thereafter.
- (7) All parties wishing to participate in the review shall inform the Committee of their intention within 14 days from initiation of the investigation and the Committee will not consider any submissions from parties that failed to adhere to this deadline, unless it has agreed otherwise in writing.
- (8) Parties indicating their interest in participating in a safeguard investigation, as provided for in paragraph (5), shall be regarded as participating interested parties.
- (9) All participating interested parties shall have 45 days from initiation of the review to submit any information they deem relevant to the Committee.
- (10) The purpose of an extension review shall be to determine whether the measure should continue to be applied after the originally or previously determined duration of the measure.
- (11) Should the Committee decide to hold a public hearing, this hearing will be held not more than 60 days after initiation of the extension review and the provisions of section 14 will apply.
- (12) Acting on a technical report by the Investigating Authority, the Committee shall consider whether to
- (a) continue application of the measure after the previously decided application thereof, including the additional duration, level and the rate of liberalisation thereof, and subject to the provisions of 18; or
 - (b) allow the measure to lapse on the scheduled date.
- (13) The Minister will make a final determination based on the recommendation by the Committee.
- (14) In exceptional circumstances and in order to provide foreign governments with a significant interest in the matter more time to consult, the deadline for completing an extension review may be extended by not more than 2 months, provided the review is finalised before the measure lapses.
- (15) A measure extended under this section shall not be more restrictive than it was at the end of the initial period, and shall continue to be liberalised.
- (16) Subject to paragraph (11) of section 19, there is no restraint on the number of times a definitive safeguard measure may be extended.

PART 4: AGRICULTURAL SAFEGUARDS

25. Agricultural safeguards

(1) An agricultural safeguard may only be applied to products recognised as agricultural products in Annex I to these Regulations, but irrespective of whether Seychelles reserved the right to use an agricultural safeguard on that product in its WTO concessions.

(2) An agricultural safeguard may be applied only where the Committee finds that the volume of imports of that product entering Seychelles during any consecutive 12-month period exceeds the trigger level which relates to the following schedule of the imports' market share, defined as imports as a percentage of the corresponding domestic consumption figure, compiled by the Ministry of Agriculture or any other relevant government institution, during the three preceding 12-month periods for which data are available:

- (a) where such market share for an imported product is less than or equal to 10 per cent, the base trigger level shall equal 125 per cent;
- (b) where such market share for an imported product is greater than 10 per cent but less than or equal to 30 per cent, the base trigger level shall equal 110 per cent;
- (c) where such market share for an imported product is greater than 30 per cent, the base trigger level shall equal 105 per cent.

(3) In all cases the additional duty may be imposed in any 12-month period where the absolute volume of imports of the product concerned entering the customs territory of Seychelles exceeds the sum of

- (a) the base trigger level set out in paragraph (2) above, multiplied by the average quantity of imports during the thirty-six preceding months for which data are available; and
 - (b) the absolute volume change in domestic consumption of the product concerned in the most 12-month period for which data are available compared to the preceding 12-month period,
- provided that the trigger level shall not be less than 105 per cent of the average quantity of imports in (a) above.

(4) Any supplies of the product in question which were en route on the basis of a contract settled before an agricultural safeguard duty is imposed shall be exempted from any such additional duty, provided that they may be counted in the volume of imports of the product in question during the following 12-month period for the purposes of triggering the provisions of paragraph (2) in that 12-month period.

(5) The exemption in paragraph (4) does not apply to products not yet en route to Seychelles, even if such products were included in a contract settled before the agricultural safeguard duty was imposed.

26. Agricultural safeguard procedures

(1) Where any domestic producer is of the view that the trigger level, as set out in section 25, to impose an agricultural safeguard measure has been reached, it shall provide the Committee with

- (a) details of the product concerned;
- (b) proof of the volume of imports;
- (c) the detailed calculation of the trigger level, including how the volumes of other producers in Seychelles, if any, were determined;
- (d) the calculation of the industry's unsuppressed selling price; and
- (e) a request indicating the level of protection sought.

(2) The Committee shall, within 14 days from receipt of the application, publish a notice in the Official Gazette indicating that it has received such request and provide importers with a period of 14 days to comment.

(3) The time frame in paragraph (2) may only be extended for the duration of any days that the offices of the Committee were closed as a result of public holidays or end-of-year closure.

(4) The Committee shall determine, within 14 days from the deadline for comments in paragraph (2), whether the trigger volume has indeed been reached.

(5) Where the trigger volume has been reached, the Committee shall recommend to the Minister that an agricultural safeguard measure be imposed.

27. Agricultural safeguard measure

(1) An agricultural safeguard duty shall be determined as

- (a) the difference between the landed cost of the imported product and the unsuppressed selling price of the Seychelles product where information so permits; or
- (b) on any reasonable basis.

(2) Notwithstanding the provisions of paragraph (1), no agricultural safeguard shall exceed one third of the bound tariff for the product, that is, it shall not be more than one third of the maximum duty that Seychelles may impose in terms of its obligations under the WTO.

(3) An agricultural safeguard duty shall not remain in place for a period exceeding 12 months from the date of imposition.

PART 5: FINAL ARRANGEMENTS

28. Notifications

(1) The Investigating Authority shall prepare all notifications that must be submitted to the WTO Committee on Safeguards relating to the matters covered by the Act and these Regulations and these notifications shall be prepared in the applicable standard formats published by the WTO.

(2) The Investigating Authority shall cooperate with the competent authority in order to prepare replies to oral or written questions presented by other WTO Members regarding any Seychelles WTO safeguard notifications.

29. Implementation of WTO dispute settlement reports

(1) The Committee and the Minister shall take appropriate actions of prospective nature in order to bring a measure taken under the Trade Remedies Act and these Regulations into conformity with the recommendations and rulings contained in a report adopted by the WTO Dispute Settlement Body in respect with any safeguard dispute that Seychelles was party to.

(2) In any case in which the WTO Dispute Settlement Body adopts a finding that a decision, practice or legislation in Seychelles is inconsistent with Article XIX of GATT 1994 or with the WTO Agreement on Safeguards, that decision, practice or legislation may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until—

- (a) the Committee has reviewed the implications and determined possible amendments to bring the measure into conformity with Seychelles' obligations under the WTO;
- (b) the Committee has provided an opportunity for public comment, including by the domestic industry, by publishing in the Official Gazette the proposed modification and the explanation for the modification; and
- (c) the Committee has submitted to the Minister a report describing the proposed modification, the reasons for the proposed amendment and an indication of how such amendments meet the requirements of the WTO ruling.

(3) The Committee and the Minister shall take cognisance of other relevant reports adopted by the WTO Dispute Settlement Body and, where applicable, shall propose amendments to the Trade Remedies Act and these Regulations as appropriate.

ANNEX 1

AGRICULTURAL SAFEGUARDS PRODUCT COVERAGE

1. For purposes of agricultural safeguards, these Regulations shall cover the following products:

- (i) HS Chapters 1 to 24 less fish and fish products, plus*
- (ii)

HS Code	2905.43	(mannitol)
HS Code	2905.44	(sorbitol)
HS Heading	33.01	(essential oils)
HS Headings	35.01 to 35.05	(albuminoidal substances, modified starches, glues)
HS Code	3809.10	(finishing agents)
HS Code	3823.60	(sorbitol n.e.p.)
HS Headings	41.01 to 41.03	(hides and skins)
HS Heading	43.01	(raw furskins)
HS Headings	50.01 to 50.03	(raw silk and silk waste)
HS Headings	51.01 to 51.03	(wool and animal hair)
HS Headings	52.01 to 52.03	(raw cotton, waste and cotton carded or combed)
HS Heading	53.01	(raw flax)
HS Heading	53.02	(raw hemp)

*The product descriptions in round brackets are not necessarily exhaustive.