



# TRADE REMEDIES IN SEYCHELLES

Trade Division

Ministry of Finance, Trade, Investment and Economic Planning  
2nd Floor, Maison Esplanade, Francis Rachel Street, Victoria

+248 4 303 404

[enquirywto@finance.gov.sc](mailto:enquirywto@finance.gov.sc)

## What are Trade Remedies?

Trade Remedies are measures imposed by the Government, following successful investigations, to offset injuries caused by either a surge of imports, imported like products that are sold cheaper than in their domestic market or imported like products that have been subsidised by the government of the exporting country.

The terms 'trade remedies' and 'trade defence measures' are often used interchangeably.

**Essentially, there are three trade remedy measures:**

Anti-dumping measures

Countervailing measures

Safeguard measures

### Anti-dumping measures

For the imposition of anti-dumping measures, the following conditions must be met:

1. That there is **dumping**
2. That the "dumped" product is a **like product** produced locally
3. That there is a **domestic industry** producing this like product
4. That there is **injury**
5. That there is a **causal link** between the dumping and the injury sustained.

#### 1. Definition of dumping

Dumping is where the export price of a product is lower than the "*normal value*" of the product. The normal value is usually the price of the "*like product*" when sold on the market of the exporting country.

*Where a product is sold for \$100 in country A, but exported to Seychelles for \$90, that would show dumping.*

Not all low prices are necessarily dumping, and dumping does not necessarily mean low prices.

To determine dumping, an analysis will need to be undertaken to make a "*fair comparison*" between the prices.

#### When can anti-dumping be used?

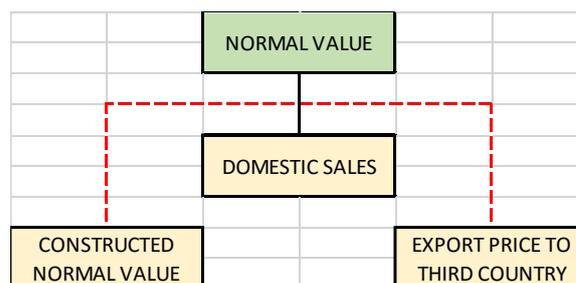
Anti-dumping measures are typically applied in the form of duties and can only be imposed if dumping causes injury to a domestic industry producing a like product.

Where dumping takes place and there is no domestic industry, this would be beneficial to Seychelles, as it decreases the cost to import and thus increases general welfare.

#### Determination of Normal Value

The normal value is usually the price of the like product when sold for consumption on the market of the exporting country *in the ordinary course of trade*. Where there are no or insufficient domestic sales, for instance if the particular product is not sold on that market, the normal value may be determined on the basis of either:

- the *export price to a third country*; or
- a *constructed value*.



## Constructed normal value

The constructed normal value is determined on the basis of total cost of production, plus a reasonable addition for selling, general and administrative expenses, and for profits.

## Third country price as normal value

The other alternative method for determining normal value is to obtain the export price from the exporting country for the like product to another country, for a similar volume as that exported to Seychelles, and where conditions in such country are similar to those in Seychelles.

*“if the country under investigation is South Africa, they don’t sell the product in the South African market, but they export roughly the same volumes to Mauritius as to Seychelles, the price to Mauritius can be used as normal value.”*

## Fair Comparison of normal value and export price

A fair comparison must be made between the normal value and the export price. This requires that the prices are compared at the same level of trade (normally the ex-factory level) and for sales made at (as nearly as possible) the same time.

Adjustments must be made for differences that affect price comparability, for instance for VAT levied on domestic sales, but not on export sales.

Adjustments are only made for direct costs, such as differences in payment terms or delivery terms. No adjustments are made for general costs such as administrative overheads or advertising.

## 2. Like Product

A "like product" is defined as

- a product which is identical, i.e. alike in all respects to the investigated product; or
- another product that has characteristics closely resembling those of the investigated product.

*“The domestic industry’s green apples will be a like product to the imported green apples as they are identical. The domestic industry’s red apples will be a like product to the imported green apples as they have characteristics closely resembling those of the green apples. However, the domestic industry’s pear will not be a like product to the imported green apples as apples and pears, although both soft fruits, are different products.”*

Determining a like product is important as it will indicate the composition of the domestic industry.

## 3. Domestic industry

The domestic industry is usually all or a “major proportion” of domestic producers of the like product. Where a producer is related to an importer or exporter of the product, or imports the product itself, and it objects to an anti-dumping investigation, that producer may be excluded from the definition of domestic industry.

Injury must be determined for the domestic industry and the producers will be required to supply information on the different injury factors (see under “Injury”).

## 4. Injury

### Types of injury

Injury can manifest in three ways: (i) material (actual and present) injury to a domestic industry, (ii) a threat of material injury, or (iii) the material retardation of the establishment of a domestic industry.



### Basic requirements for determination of material injury

The determination of injury must be based on positive evidence and involve an objective examination of

- the volume of dumped imports;
- the effect of the dumped imports on prices in the domestic market; and
- the consequent impact of the dumped imports on domestic producers of the like product.

Factors taken into consideration include actual or potential declines in sales, profits, output, market share, productivity, return on investments, utilisation of capacity, actual or potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, and the magnitude of the margin of dumping.

The questionnaires will clearly set out which information has to be submitted at what stage, and all information will be treated confidentially.

### Threat of material injury

The same injury factors considered under “injury” must also be evaluated when determining a threat of injury. In addition, consideration will be given to some additional

factors to see whether the threat will become actual injury in the near future.

## 5. Causal link

It must be shown that dumping causes the injury. Any injury caused by other factors, such as changes in the pattern of demand, developments in technology and the domestic industry’s export performance, must be excluded and may not be attributed to the dumping.

“If injury is caused by a severe thunder storm, flooding or a labour strike, this cannot be attributed to the dumping.”

## 6. Anti-dumping duties

The maximum level of anti-dumping duty that may be imposed is the margin of dumping, but expressed as a percentage of the Cost, Insurance, Freight (CIF) price of the product. Any anti-dumping duty is in addition to any customs duties on the product.

### Individual dumping margins

The margin of dumping must normally be calculated for each exporter. This is called ‘individual dumping margins’. Thus, where there are two exporters to Seychelles, they may end up with different duties, based on the margins of dumping of each exporter.

## Countervailing measures

For the imposition of anti-dumping measures, the following conditions must be met:

1. That there is a **subsidy**
2. Provided to the production of a **like product**
3. That there is a **domestic industry** producing this like product
4. That there is **injury**
5. That there is a **causal link** between the subsidisation and the injury sustained.

The procedure for countervailing measures are almost identical to that of anti-dumping measures. The only difference is that instead of proving dumping, one must prove that there is a subsidy.

### **1. Definition of a subsidy**

A subsidy, in principle, is

- any financial contribution by a government or any public body within the territory of the exporting country subject to a countervailing investigation
- or any form of price income or price support in that country,
- provided that a benefit is conferred thereby.

A financial contribution includes

- direct transfers of funds (grants, loans at less than market rates, equity infusions made inconsistent with normal investment practices);
- potential direct transfers of funds or liabilities (loan guarantees);
- where government revenue otherwise due is foregone or not collected (tax holidays or waivers);
- where a government provides goods or services other than general infrastructure for less than cost, or purchases goods for more than market value;
- where a government directs a private body to carry out these functions on its behalf.

A benefit will exist if the value is different to what the recipient would have paid or received for the same product in the market place.

*Where a government provides funds to a domestic industry, and unless those funds are an investment in line with normal market behaviour, such provision of funds constitutes a subsidy*

Technical and financial assistance by NGOs or foreign governments (as aid) is not regarded as a subsidy.

### **2. When can countervailing be used?**

Subsidised imports “are to be condemned” if they cause injury to a domestic industry producing a like product.

This can be addressed in the form of countervailing action, typically in the form of countervailing duties, although the exporter or foreign government can offer certain undertakings.

Where subsidised imports take place and there is no domestic industry, this would be beneficial to Seychelles, as it decreases the cost to import and thus increases general welfare.

### **3. What is a government?**

A government includes national and sub-national governments, public bodies such as state-owned enterprises, and any other body acting under instructions of government.

### **4. Types of subsidies**

#### **General**

There are three types of subsidies: prohibited subsidies; actionable subsidies; and non-actionable subsidies. Subsidies are prohibited or actionable if they are “specific”.

#### **Specificity**

A subsidy must be “specific before it can be countervailed. A subsidy is specific if it is (a) a “prohibited subsidy” or is otherwise specific to

(b) an enterprise or limited number of enterprises, (c) to an industry or limited number of industries, or (d) to a geographical region.

A subsidy can be specific in law or in fact. It will be specific in law if the subsidy programme clearly limits its application to certain enterprises/industries/ regions. However, where a programme is ostensibly available to all, but in practice is used, or predominantly used, by only a few enterprises, it becomes specific in fact.

### Prohibited subsidies

There are two categories of prohibited subsidies: (a) export subsidies; and (b) subsidies subject to the use of domestic over imported raw materials. An illustrative list of export subsidies is included in the Countervailing Regulations.

### Actionable subsidies

All other subsidies that are specific are actionable. Thus, while a government of an exporting country is allowed to use these subsidies to develop its industry, where these subsidies cause injury to an industry in Seychelles, countervailing action may be taken.

The non-specificity provisions in the WTO's Subsidies and Countervailing Measures Agreement, which made certain subsidies non-actionable, no longer applies.

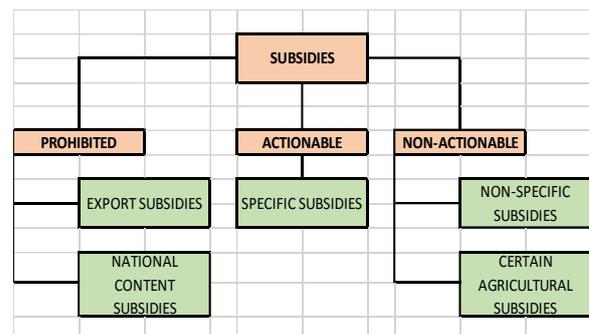
### Non-actionable subsidies

Non-actionable subsidies fall into three categories: (a) general infrastructure; (b) generally available subsidies; and (c) certain agricultural subsidies.

Where government provides general infrastructure, this is not deemed a subsidy. However, where the infrastructure is for the benefit of a particular enterprise or industry, this becomes specific.

*“Where government provides a general subsidy on cooking oil to all industries or its citizens, this subsidy is non-actionable, and therefore no action can be taken against such a subsidy”*

Certain agricultural subsidies are not actionable, provided they conform to the requirements of the WTO's Agreement on Agriculture. This includes a direct subsidy of up to 5 per cent on any specific agricultural product (10 per cent in the case of developing countries), plus an additional non-specific subsidy of another 5 per cent (10 per cent for developing countries). However, agricultural subsidies may not result in price or income support.



## 5. Countervailing duties

The maximum level of a countervailing duty that may be imposed is the margin of subsidisation, expressed as a percentage of the Cost, Insurance, Freight (CIF) cost of the product.

## 6. Individual countervailing margins

An individual margin of subsidisation must normally be calculated for each exporter. Thus, where there are two exporters to Seychelles, they may end up with different duties, based on the margins of subsidisation of each exporter.

## Safeguard measures

For the imposition of safeguard measures, the following conditions must be met:

1. That there is a **surge of imports**
2. Of a **like or directly competitive product**
3. Produced by the **domestic industry**
4. Causing **injury to the domestic industry,**
5. That is caused by an **unforeseen development** following successful negotiation of concessions and Seychelles accession to World Trade Organization (WTO), and
6. That there is a **causal link** between the surge of imports and the injury sustained.

### 1. Definition of a safeguard

Safeguards, in its simple dictionary sense, means "temporary measures designed to slow imports to enable a particular industry to adjust to heightened competition from foreign suppliers".

An import "surge" justifying safeguard action can be a real increase in imports (an absolute increase); or it can be an increase in the imports' share of a shrinking market, even if the import quantity has not increased (relative increase).

In principle, safeguard measures cannot be targeted at imports from a particular country. It is a measure to be applied to imports from all countries, with developing countries exporting a minor volume excluded from the application of measures.

## 2. Types of safeguards

### General

There are three types of safeguards:

1. "global safeguards", that is, safeguards under the WTO's Agreement on Safeguards;
2. "agricultural safeguards"; and
3. "free trade agreement safeguards".

### Global safeguards

#### When can global safeguards be used?

A safeguard measure can be imposed where the "domestic industry" producing a "like or directly competitive product" experiences "serious injury" as a result of a "surge of imports". The surge of imports must be caused by:

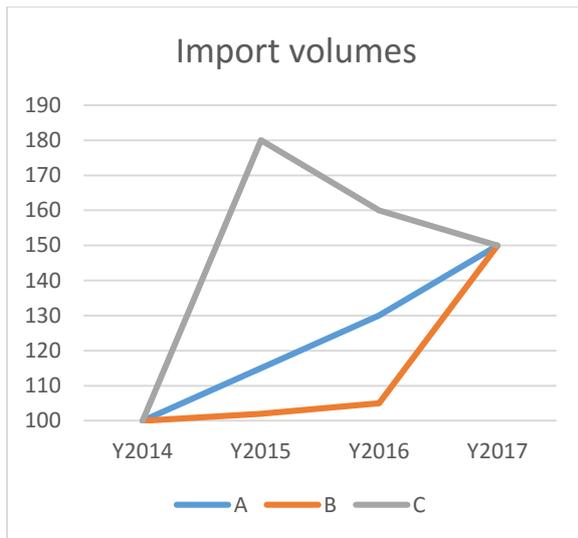
(1) "unforeseen developments" and (2) as a result of obligations Seychelles incurred under the World Trade Organization's (WTO's) General Agreement on Tariffs and Trade (GATT) 1994, including tariff concessions.

### 3. Like or directly competitive product

A "like or directly competitive product" is defined as

- a product which is identical, i.e. alike in all respects to the investigated product; or
- another product that has characteristics closely resembling those of the investigated product; or
- another product that competes directly with the subject product.





In this graph, imports in each instance increased from 100 to 150. However, in scenario A, imports increased steadily, i.e. there was no surge. In scenario C, there was a surge in 2015, but since then, imports have decreased, which means that there has not been a “recent” increase in imports. However, in scenario B, imports surged in 2017, and this means a safeguard can be used under that scenario.

### Other factors

Factors taken into consideration include the market share of the imported product, domestic industry and imported product prices, changes in the level of sales, profits and losses, output, productivity, utilization of capacity, and employment.

The questionnaires will clearly set out which information has to be submitted at what stage, and all information will be treated confidentially.

### Threat of serious injury

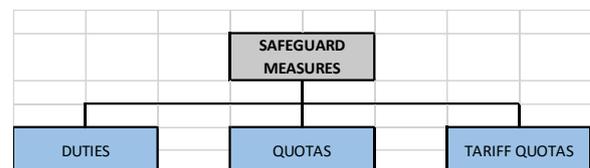
The same injury factors considered under “injury” must also be evaluated when determining a threat of injury. In addition, the consideration must be given to some additional factors to see whether the threat will become actual injury in the near future.

## 6. Causal link

It must be shown that increased imports cause the injury. Any injury caused by other factors, such as changes in the pattern of demand, developments in technology and the domestic industry’s export performance, must be excluded and may not be attributed to the increased imports.

“If injury is caused by a severe thunder storm, flooding or a labour strike, this cannot be attributed to the increased imports.”

## 7. Safeguard measures



### Provisional measures

Provisional measures can be imposed at any stage and there is no minimum number of days that have to pass, as is the case in anti-dumping and countervailing investigations. However, there must firstly be a preliminary determination of serious injury caused by increased imports, and that the imports had increased as a result of unforeseen developments and GATT obligations. In addition, Seychelles must notify the WTO Committee on Safeguards *before* a provisional measure is imposed.

Provisional measures are always imposed in the form of a duty (ad valorem or specific) and may be imposed for a maximum of 200 days.

### Definitive measures

If an affirmative final finding of unforeseen developments, GATT obligations, increased imports, injury and causal link is made, safeguard measures may be imposed in the form of duties, tariff quotas or quotas.

Safeguard measures may be imposed for an initial period of up to 4 years (including the period for which provisional duties were imposed), and may be extended to a maximum of 10 years.

### **Definitive duties**

The level of duty will normally be determined as the difference between the price at which the industry would have been selling its product in the absence of the surge of imports (the “unsuppressed selling price”) and the price of the imported product.

### **Tariff quotas**

Where domestic industry cannot supply the total domestic demand and a certain volume would need to be imported even if a safeguard measure is imposed, a tariff quota can be used. Within this quota, the duty is either not increased or only a small safeguard duty is imposed, while imports outside of the tariff quota will attract a significant additional duty. The advantage is that this provides protection to the domestic industry, while not leading to unnecessary price increases to consumers.

### **Quotas**

The final form of a safeguard measure is a quota, which limits the volume of imports that may enter Seychelles. A size of the quota is normally based on the average import volume over the last three years. The quota can be allocated amongst exporting countries or importers, based on their historical share of exports to Seychelles.

### **Liberalisation**

Where a safeguard measure is imposed for a period exceeding one year, it has to be liberalised regularly. Thus, if a safeguard duty of 50% was imposed, it would have to decrease after a year and again after another year. Likewise, if a quota was imposed, the size of the quota would have to increase each year.

### **Compensation**

Where a definitive safeguard measure is imposed, regardless of the form thereof, Seychelles has to compensate its trade partners.

*"If Seychelles were to impose a measure affecting \$10 million of imports from India, it would have to provide India better access on another product, also worth \$10 million, or India could block \$10 million worth of imports from Seychelles. However, provided Seychelles followed the WTO rules in conducting the investigation, the right to compensation is suspended for a period of 3 years."*

### **Non-application of another safeguard**

Once a safeguard measure has been imposed and it lapses, another safeguard measure cannot be imposed for a period of at least 2 years.

## **8. Investigation**

### **Initiation**

Investigations are normally initiated on the basis of written request submitted "by or on behalf of" a domestic industry, where at least 25 per cent of all producers (by production volume) must support the application.

The application must contain, inter alia:

- proof of unforeseen developments and GATT obligations;
- proof of increased imports, injury, and causality; and
- the identity of the applicant, other domestic producers, importers, exporters, and the imported and domestic products.

Under special circumstances the authorities may self-initiate an investigation, but only if they have sufficient evidence of unforeseen developments, GATT obligations, increased imports, injury and causality.

All investigations should be finalised within 9 months. In special circumstances, this may be extended to 12 months.

### **Investigations**

Once an investigation has been initiated, the World Trade Organization (WTO) is notified and parties are given an opportunity to indicate whether they want to cooperate in the investigation, with an additional period granted to those that want to cooperate to make submissions.

Information may be submitted confidentially, provided a non-confidential version, which contains a reasonable understanding of the information submitted in confidence, is also submitted.

Interested parties may also request technical meetings and hearings. There may be a need to conduct verification at the premises of any domestic company submitting information, or may check the accuracy of the information in a different way.

In the case of safeguards, public hearings must be conducted. All participating interested parties may make presentations on any relevant issue at the public hearing. Any other party may also attend the public hearing, but may only make submissions on public interest.

If a party does not cooperate fully, its information may be disregarded and the investigation being conducted may only rely on the facts available for its determination in respect of that party.

## **9. Agricultural safeguards**

An agricultural safeguard may be applied on any agricultural product for a maximum of 12 months and at a rate of not more than one third of the “bound rate”, i.e. the maximum duty Seychelles may impose on that product as a customs duty. Thus, if the bound rate on a product is 25%, the maximum agricultural safeguard will be 8.33%.

An agricultural safeguard may be imposed where it is shown that imports have reached a “trigger” level. The trigger level is based on (a) the market share of the imported product; (b) the growth in import volumes over the preceding 12 months; and (c) the growth in the total size of the market.

The agricultural safeguard may be imposed again provided all the conditions have been met.

There is no need for the domestic industry to prove injury or causality.