

MINISTRY OF DEVELOPMENT, INDUSTRY AND FOREIGN TRADE

SECRETARIAT OF FOREIGN TRADE

DEPARTMENT OF TRADE REMEDIES

Global Safeguards vs. Bilateral Safeguard Measures under FTAs

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Brazilian Legislation

- **Decree 1.355/1994:** incorporated the Agreement on Safeguards into the Brazilian Legislation
- **Decree 1.488/1995:** established the administrative proceedings for the investigation and imposition of safeguard measures in Brazil
- **Ordinance SECEX 19/1996:** established guidelines for the submission of petitions concerning safeguard investigations
- **Decree 1.936/1996:** modified Decree 1.488/1995, determining that safeguard measures should be imposed, among other ways, as an increase of the import duty.

Imposition and Nature of Safeguards

- Article VIII of Decree 1.488/1995:
 - Safeguard measures shall be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry, in the following ways:
 - increase of the import tariff, through an addition to the Common External Tariff (CET), in the form of an ad valorem duty, a specific duty or a combination of both
 - quantitative restrictions
- Tax nature of safeguards

Safeguard Investigations in Brazil

Product	Conclusion	Type of safeguard measure
Toys	1997 / 1999 / 2003	Addition to CET
Coconut	2002 / 2006 / 2010	Quantitative restriction
Writable optical media	2009	-
Wine	2012	-

Regional and Bilateral Safeguard Measures under FTAs

- Some bilateral and regional agreements signed by Brazil or by MERCOSUR provide for preferential safeguards regimes.
- Preferential safeguards under such agreements shall usually consist in:
 - The suspension of the tariff reduction schedule; or
 - The reduction of the agreed preference margin.
- Safeguard investigations may be conducted and safeguard measures may be imposed:
 - In the name of MERCOSUR as a whole; or
 - In the name of a specific Members State.

Regional and Bilateral Safeguard Measures under FTAs

- ACE – 35 (Economic Supplemental Agreement N. 35): MERCOSUR-Chile
 - Establishment of a regional safeguards regime.
 - Imposition of regional safeguards based on the schedule for tariff reduction;
 - Once the schedule were fulfilled, a Member would only be able to impose regional safeguards with the approval of the other Members;
 - Regional safeguard measures shall consist in:
 - The suspension of the tariff reduction schedule provided for in ACE-35;
or
 - The reduction or the suspension of the agreed preference margin.

Exclusion of FTA Partners from Global Safeguards

- **ACE – 18 (Economic Supplemental Agreement N. 18): MERCOSUR**
 - **Prohibits the imposition of safeguards among its Members (Arbitral Report III)**
 - **Exceptions:**
 - **Decision 08/1994: Free Zones and Exportation Processing Zones**
 - **Automotive Industry**
 - **Sugar Industry**

Exclusion of FTA Partners from Global Safeguards

➤ **MERCOSUR-Israel Agreement**

- Imports of a contracting party shall be excluded from a multilateral safeguard measure if:
 - The product under consideration is covered by this Agreement; and
 - Such imports do not account for a substantial part of the total imports and do not significantly contribute to the serious injury caused on the domestic industry.
- Imports of a contracting party shall not be considered substantial if:
 - They are not amongst the top 5 exporters of the product under consideration to the other contracting party; and
 - They do not represent 15% or more of the total imports.

Injury Analysis and Parallelism

➤ Parallelism

- If Brazilian imports originating from certain countries (i.e. MERCOSUR countries and Israel) are excluded from global safeguard measures, such imports are not considered in the injury analysis conducted by DECOM.
- Such imports shall be taken into consideration in the analysis of “other relevant factors”/causal link.

Injury Analysis and Parallelism

- Parallelism does not apply to imports excluded from safeguard measures on the basis of Article IX of the Agreement on Safeguards (“Developing Country Members”).
- Therefore, such imports are considered in the injury analysis, even though they might not be subject to the safeguard measures imposed.
- When deciding which imports shall not be subject to the safeguard measure, DECOM takes into account all Brazilian imports, including those originating from FTA partners excluded from the global safeguard.

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THANK YOU!

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