



DECREE-LAW
on
Trade Remedies Measures
(Approved by the Council of Ministers on 6th December 2023)

Timor-Leste's Accession to the Agreements of the World Trade Organisation (WTO) and the Economic Partnership Agreement (EPA) between the European Union and the Pacific States, as well as Timor-Leste's integration into the Association of Southeast Asian Nations (ASEAN) require formal commitments on market access for goods and services, with a view to reducing or even exempting customs duties, carrying out various reforms and approving trade restrictions as part of a process of trade liberalisation.

There are flexibilities built into trade liberalisation agreements to provide guarantees in difficult times. In fact, under the terms of the WTO and ASEAN agreements, Timor-Leste can suspend trade liberalisation commitments by resorting to trade remedies measures, as mechanisms to protect national industry against unfair trade practices, which are understood as a strategy to dominate markets by companies or governments of competing countries, which end up making fair competition difficult or impossible.

By definition, there are two unfair trade practices, namely dumping and subsidisation.

On the other hand, there are three trade remedies measures, namely anti-dumping measures, countervailing measures and safeguard measures.

In this sense, it is essential to adopt trade remedies measures which, in addition to preventing or minimising the effects of unfair trade practices, can also be used to provide temporary protection for the national industry against a surge in imports.

Temporary protection of domestic industries is the fundamental objective of trade remedies measures. Corrective safeguard measures make it possible to temporarily increase customs duties or, in some cases, apply quantitative restrictions, such as import quotas, in order to protect domestic industries from competition from imports. The typical reason for such measures is an increase in imports in quantities that are too high for the domestic industry, to which safeguard measures can be applied, or also in the event that these imports benefit from unfair pricing practices by exporters, in the case of anti-dumping duties, or unfair subsidies granted by exporting countries, in the case of countervailing duties.

In this way, safeguard measures allow the government to grant relief to domestic industries only for as long as is necessary, i.e. until the domestic industry is able to compete with imports or until unfair pricing practices or unfair public subsidies in exporting countries cease.

In addition, trade remedies measures make it possible to deal with the political pressures that can result from trade liberalisation and the consequent increase in competition from imports. Without these relief mechanisms, political pressures can jeopardise the whole process of trade liberalisation.

Furthermore, trade remedies measures can also attract new investment into the economy, as investors, both domestic and foreign, feel more confident that their investments are protected if they face increased or unfair competition from imports.

In fact, by means of this law, the government has opted for the application of safeguard measures and created the Investigating Body, with the power to carry out an enquiry and make decisions within the scope of these measures.

Finally, among other things, the requirements and procedures for the application of safeguard measures are defined, as well as the necessary notifications to interested parties and the WTO Dispute Settlement Committee.

Thus,

The Government hereby decrees, under the terms of Article 115 (1) (e), (i) and (o) and Article 116 (d) of the Constitution of the Republic, to be valid as law, as follows:

CHAPTER I GENERAL PROVISIONS

Article 1 Object

1. This decree-law establishes trade remedies measures and the procedures for their application.
2. This law also establishes the Investigating Body for the investigation and application of trade remedies measures.

Article 2 Scope of application

1. This Decree-Law applies to safeguard measures against unfair trade practices, namely dumping and subsidisation of products of foreign origin that occur on national territory.

2. The State may only apply a safeguard measure to a product imported into the territory of Timor-Leste if it has determined, following an investigation carried out in accordance with the provisions of the present law and its subsequent regulations, that, as a result of unforeseen events and the effect of the obligations assumed by Timor-Leste under the General Agreement on Tariffs and Trade (GATT) 1994, the product under investigation is being imported in such increased quantities, in absolute terms or in relation to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry manufacturing like or directly competing products, and that the application of such measures is in the public interest.

Article 3

Definitions

For the purposes of this law, the following definitions apply

- a) *"Agreement"*, World Trade Organisation Agreement on Safeguards;
- b) *"Threat of serious harm"*, clearly imminent serious harm;
- c) *"Committee"* means the World Trade Organisation's Committee on Safeguards;
- d) *"Investigating Body"* means the body responsible for investigating the application of safeguard measures;
- e) *"Dumping"*, the commercialisation of products below the cost of production or below the price of the product on the market of the exporting country;
- f) *"GATT 1994"*, General Agreement on Tariffs and Trade 1994;
- g) *"Domestic industry"* means all producers of like products or products in direct competition with the product under investigation, operating in the territory of Timor-Leste; or producers operating in that territory whose collective output of like products or products in direct competition constitutes a major proportion of the total domestic production of those products;
- h) *"Member"* means a member country of the World Trade Organisation;
- i) *"WTO"*, World Trade Organisation;
- j) *"Country or Countries"* means any member of the WTO and any other country or autonomous customs territory;
- k) *"Stakeholders"*:
 - i) Exporter and foreign producer of the product under investigation;
 - ii) Importer of the product under investigation;
 - iii) A trade or business association, the majority of whose members are producers, exporters or importers of the product under investigation;
 - iv) Government of the exporting country;
 - v) Producer of similar or directly competing national products in Timor-Leste;
 - vi) Trade or business association in which the majority of members are producers of the like product or directly competes on the domestic market in Timor-Leste;
 - vii) Trade unions or other organisations representing the interests of workers in national industry;
 - viii) Consumer associations;

- ix) Industrial users of the product under investigation;
- x) Any other natural or legal person that the Investigating Body considers to have a sufficient interest in the outcome of the investigation;
- l) "*Participating interested parties*" means interested persons or organisations who have expressed an interest in participating in a survey in accordance with Article 14;
- m) "*Serious injury*" means a significant global deterioration in the position of a domestic industry;
- n) "*Product under investigation*" means an imported product subject to a safeguard investigation under this Decree-Law, as described in the notice of initiation, under the terms set out in this Decree-Law;

CHAPTER II

INSTRUCTING BODY

Article 4

Competence

1. It is the sole responsibility of the Investigating Body to carry out enquiries into serious damage or threats of serious damage to the national industry resulting from unfair commercial practices, as well as the reasons justifying such damage.
2. The Investigating Body is also responsible for issuing decisions on the application, suspension and revocation of safeguard measures, as well as decisions on the amendment or extension of the corresponding periods of application.

Article 5

Composition and operation

1. The Teaching Organisation is made up of the following members:
 - a) Director-General for Trade, who chairs;
 - b) Commissioner of the Customs Authority;
 - c) Director-General of Industry.
2. In exercising its competences, the Instructing Authority shall be supported administratively by the necessary staff appointed from the departments headed by the members referred to in the previous paragraph.
3. The investigating body may be provided with suitable experts with specialised and recognised competence in the matter under investigation, by means of a proposal approved by order of the members of the government responsible for finance, trade and industry.
4. The members of the Training Body approve the proposal for the internal operating regulations,

which are approved by a joint ministerial decree issued by the members of the government responsible for Finance, Trade and Industry.

Article 6

Obligations of the Training Organisation

1. The Instructing Authority is bound to comply with the provisions of this statute and any regulations under this statute in the exercise of the competences assigned to it and carries out its competences impartially and transparently.
2. The Training Body does not disclose any information that is entitled to confidential treatment in relation to any proceedings under this law.
3. Any person acting under the authority of the Training Organisation who discloses this confidential information shall be subject to the applicable disciplinary and criminal sanctions.

CHAPTER III

SERIOUS INJURY OR THREAT OF SERIOUS INJURY AND CAUSAL LINK

Article 7

Serious injury and causal link

1. The determination of whether increased imports of the product under investigation have caused or are threatening to cause serious injury to a domestic industry is based on an evaluation of all factors of an objective and quantifiable nature having a bearing on the state of the industry concerned, in particular:
 - a) The rate and amount of the increase in imports of the product under investigation, in absolute terms and in relation to domestic production of like or directly competing products;
 - b) The part of the domestic market absorbed by increased imports of the product under investigation;
 - c) The prices of the product under investigation, in particular to determine whether lower prices have been recorded than those of similar or directly competing domestic products;
 - d) The impact of increased imports of the product under investigation on the domestic industry, as evidenced by indicators including production, capacity utilisation, stocks, sales, market share, prices representing a decrease in domestic prices or the fact that domestic prices would not have increased if there had been no increase in imports, productivity, profits and losses, return on investment, cash flow and employment;
 - e) Factors other than increased imports of the product under investigation, which at the same time cause or threaten to cause serious injury to the domestic industry.
2. The Investigating Body may only determine that increased imports of the product under

investigation have caused or are threatening to cause serious injury to a domestic industry if it considers that there is a genuine and substantial relationship of cause and effect between the increased imports and the actual or potential serious injury.

3. When the cause or threat of injury to the industry results from other factors, this injury is not attributed to the increase in imports.

Article 8

Threat of serious harm and causal link

1. The determination of a threat of serious injury caused by increased imports is based on facts and not just allegations, conjecture or remote possibilities.
2. In order to determine whether the increase in imports threatens to cause serious injury, the Investigating Body shall assess, in addition to the factors referred to in Article 7(1), the following elements:
 - a) The export capacity and potential of the country or countries of production or origin;
 - b) The possible accumulation of stocks in Timor-Leste and export countries;
 - c) The likelihood that exports of the product under investigation will enter Timorese market in increasing quantities;
 - d) Any other factor deemed relevant by the Training Organisation.

CHAPTER IV INVESTIGATION

SECTION I PROCEDURES

Article 9 Start of enquiry

An investigation into whether increased imports of the product under investigation have caused or are threatening to cause serious injury to a domestic industry is initiated:

- a) By means of a written request addressed to the Training Body in favour of or on behalf of a national industry;
- b) On the initiative of the training organisation.

Article 10 Requirements applicable to a written request

A written request for the application of a safeguard measure includes the information available to the applicant on the following aspects:

- a) A full description of imported product, including its technical characteristics and uses, as well as an identification of its tariff classification and applicable duties;
- b) A full description of similar or directly competing domestic products, including their technical characteristics and uses;
- c) The names and addresses of the companies or organisations represented in the application and of all other known producers of similar or directly competing domestic products;
- d) The percentage of national production of similar or directly competing products represented by the applicant companies;
- e) Information on the volume and value of the imported product for each of the three calendar years preceding the application, as well as any more recent partial data, by country of origin;
- f) A description of the alleged increase in imports, in particular whether this increase is absolute, relative to domestic production or both;
- g) Information on the existence of serious injury or threat thereof to the domestic industry, for each of the three calendar years preceding the request, as well as any more recent partial data.

Article 11

Information on serious damage caused or threatened injury to the national industry

1. In the case referred to in point g) of the previous article, the provision of information includes, in particular:
 - a) Regarding the allegation of serious damage:
 - i. Volume and value of national production;
 - ii. Utilisation of production capacity;
 - iii. Changes in stock levels;
 - iv. Market share;
 - v. Changes in sales levels;
 - vi. Level of employment and wages in national industry;
 - vii. Changes in price levels;
 - viii. Productivity;
 - ix. Profits and losses;
 - x. Return on investment;
 - xi. Cash flow;
 - xii. Any other indicators deemed relevant.

- b) In the event of an allegation of a threat of serious harm:
 - i. Export capacity in export countries;
 - ii. Stocks in Timor-Leste and export countries;
 - iii. Information on the likelihood of increased imports, including, for example, trade restrictions on exports to third country markets.
- 2. Other relevant information is also due, including:
 - a) An explanation of the data provided in the request and the requirements of this Order and the reasons why it is considered that there is serious injury or a threat of serious injury caused by the increase in imports;
 - b) Information on relevant unforeseen events;
 - c) Information on the effect of the relevant obligations contracted by Timor-Leste under the GATT 1994;
 - d) A statement indicating the specific reasons for the application of a safeguard measure, namely to facilitate the orderly transfer of resources to more productive uses of domestic industry, to improve competitiveness or to adapt to new conditions of competition, together with the type and level of the measure considered necessary to ensure that the desired objectives are achieved;
 - e) An explanation of why the application of a safeguard measure is in the public interest;
 - f) A plan to adjust the domestic industry to competition from imports, in line with the objectives described in point d);
 - g) If a provisional measure has been requested, information on circumstances in which the delay in adopting measures causes damage that is difficult to repair to the national industry, as well as a statement indicating the level of the tariff increase requested as a provisional measure.

Article 12

Quitting

Any request under Article 8 may be withdrawn prior to the decision on the initiation of the investigation, in which case it shall be deemed to have been closed.

Article 13

Decision to initiate the enquiry

- 1. The Investigating Body may only initiate an investigation, either at the request of an interested party from a domestic industry or on its own initiative, if it concludes that there is sufficient evidence that, as a result of unforeseen developments and the effect of obligations entered into by Timor-Leste under the GATT 1994, the product under investigation is being imported in such greatly increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry manufacturing like or directly competing products.

2. When a request is received, the Investigating Body may obtain any additional information it deems necessary, in particular from the requesting companies, before deciding whether or not to open an investigation.
3. When it has received a request, the Investigating Body decides, within 15 days of receiving the request, whether or not to initiate the investigation.
4. If the Investigating Body decides not to initiate the investigation in response to a request, it notifies the requesting companies of the reasons why it refuses to initiate the investigation.
5. If the request involves complex issues or if the Investigating Body has requested additional information pursuant to paragraph 1, the period referred to in paragraph 3 shall be extended to 30 days.

Article 14

Public notice and notification of initiation

1. Immediately after taking the decision to initiate the investigation, the Investigating Body notifies the known exporting countries and interested parties directly in writing by means of a notice published in the Official Gazette of Timor-Leste.
2. The starting date of the enquiry is the date of publication.
3. Interested parties wishing to take part in the investigation have 30 days from the date of its initiation to inform the Investigating Body in writing of their interest in taking part in the investigation.
4. The Investigating Body may authorise interested parties to express their interest in participating in the investigation after that date, by means of a reasoned decision.
5. The decision to open an enquiry will be notified to the Committee.
6. The notification referred to in the previous paragraph shall be made immediately after the initiation of the investigation, in accordance with the requirements established by the Committee.

Article 15

Content of the notice of initiation of a safeguard investigation

1. The notice of initiation of a safeguard investigation contains the following information:
 - a) A full description of the product under investigation, including its technical characteristics and uses, as well as identification of its tariff classification and applicable duties;
 - b) A full description of similar or directly competing domestic products, including their technical characteristics and uses;
 - c) The names of the applicant companies and, if any, of all other known producers of similar or directly competing domestic products;
 - d) The country or countries of origin of the product under investigation;
 - e) A summary of the information on which the allegations of increased imports and serious injury or threat of serious injury caused by increased imports are based, including a summary of unforeseen developments that have led to the alleged increase in imports of the product under investigation or to a change in the conditions under which such imports occur, as well as a summary of the effect of the obligations entered into by Timor-Leste under the GATT 1994;
 - f) Contact information, namely the name, address and telephone number of the contact person at the Training Organisation;
 - g) Declaration that the starting date is the date of publication of the notice of initiation of the safeguard investigation;
 - h) Whether or not the application of a provisional measure is considered;
 - i) The proposed timeframe for the enquiry, including:
 - i. The date by which interested parties wishing to participate in the investigation inform the Investigating Body in writing;
 - ii. In the case of a provisional measure, the timetable and deadlines for the preliminary stage of the investigation, including the deadline for submitting any written arguments or other comments;
 - iii. The date by which a hearing is requested in the enquiry;
 - iv. The proposed dates for the decision to apply the provisional safeguard measure, where appropriate, for the determination of serious injury or threat of serious injury and the causal link, as well as for any decision on the application of a definitive safeguard measure.

2. In cases where the Investigating Body has decided not to open an investigation, the notice referred to in the previous paragraph contains the following information:
 - a) The identity of the requesting companies and the national products for which the initiation of an investigation has been requested;
 - b) Identification of the imported product;
 - c) The reasons for not initiating the enquiry.

Article 16

Enquiry deadline

1. The investigation shall be finalised within 180 days of its initiation.
2. The Training Organisation may extend this deadline once, for an additional 60 days.
3. Where the application of a provisional measure is considered, the Investigating Body shall decide in accordance with Article 23.
4. During the investigation, the Investigating Body establishes and immediately communicates to all participating interested parties the necessary deadlines for carrying out the investigation.
5. The time limits established pursuant to this Article shall provide all participating interested parties with sufficient opportunity to make known their views on the matters under investigation, for which purpose sufficient time shall be allowed for the submission of replies to questionnaires and other requests for information, for the preparation and submission of other evidence submitted by participating interested parties and for the presentation of the views of participating interested parties, in particular with regard to the arguments put forward by other participating interested parties and with regard to the question of whether or not the application of a safeguard measure is in the public interest.

SECTION II DIRECTION OF ENQUIRY

Article 17 Investigative powers

1. The Investigating Body directs the enquiry and may directly request from the participating interested parties, customs brokers, inspection companies, freight forwarders and other companies and entities in the public and private sectors the data and information it deems relevant for the performance of its duties.
2. The information requested under the terms of the previous paragraph shall be submitted within the time limits set.
3. The Training Organisation may carry out an on-site inspection to verify or obtain further details of the information provided.
4. In the case referred to in the previous paragraph, the Inspection Body draws up a report describing the results of the inspection, which, with the exception of any confidential information, is promptly placed in the file, with public access.

Article 18
Handling confidential information

1. Any information that is of a confidential nature or that is provided for confidential treatment is, with justification, treated as such by the Training Body and may not be disclosed without the authorisation of the person who provided it.
2. The provision of confidential information includes non-confidential summaries thereof.
3. In the event of a claim that confidential information cannot be summarised, the applicant shall provide the corresponding reasons.
4. If the Investigating Body considers that the request for confidential treatment is not justified and the applicant is not willing to make it public, this information will not be known and the item containing it will be returned to the applicant.
5. The provision of confidential information by the government of the product country subject to a safeguard measure to a WTO dispute settlement panel, at the request of that panel, in the context of a dispute concerning the compatibility with the country's international obligations of the safeguard measure or the investigation in the context of which the information was obtained, is not considered to be disclosure of confidential information.

Article 19
Written arguments

1. All participating interested parties shall be given the opportunity, in accordance with the provisions of this Article, to submit evidence and arguments in writing, including responses to the written and oral submissions of other participating interested parties and views on whether or not the application of a safeguard measure is in the public interest.
2. In an investigation examining the application of a provisional safeguard measure, any participating interested party may submit written arguments on any matter it considers relevant to the preliminary stage of the investigation, up to eight days before the proposed date of the decision to apply that measure.
3. In an investigation where a hearing is not requested, any participating interested party may submit written comments on any matter it considers relevant to the investigation, up to 45 days before the proposed date of the Investigating Body's decision on serious injury or threat of serious injury and causation.

4. Participating interested parties shall have an additional period of 10 days after the expiry of the period referred to in the preceding paragraph to submit their written counter-allegations to the written arguments of other participating interested parties.
5. In an investigation in which a hearing is to be held, any participating interested party may submit written arguments and information on any matter it considers relevant to the investigation, up to 10 days before the date scheduled for the hearing.
6. Once the hearing has taken place, the interested parties who took part in it may, within the following 10 days, submit new written arguments in response to the arguments and information presented at the hearing.

Article 20

Audience

1. The Investigating Body, upon request of a participating interested party submitted no later than 15 days after the publication of the decision to apply a provisional measure or, if the application of a provisional measure is not considered, no later than 45 days after the initiation of proceedings, shall schedule a hearing at which all participating interested parties may present information and arguments orally.
2. The hearing is held up to 60 days before the proposed date to determine serious damage or the threat of serious damage and the causal link.
3. Participating interested parties are not obliged to attend a hearing and their failure to do so does not prejudice them in any way.
4. The Hearing Body organises the holding of the hearing in such a way as to make it compatible with the convenience of the participating interested parties.
5. Participating interested parties who intend to attend a hearing shall notify the Hearing Officer in writing, no later than seven days before the date of the hearing, of the names of their representatives and the witnesses who must attend the hearing.
6. The hearing is organised by the Training Body, which ensures that confidentiality is preserved and organises the hearing in such a way as to guarantee that all participating interested parties have an adequate opportunity to present their points of view.
7. The Investigating Body uses and keeps a written or audio record of the hearing, which is promptly placed in the file, with the exception of any confidential information.

Article 21

Public process and access to it

1. The Investigating Body shall establish and maintain a public file relating to each investigation or any other proceeding conducted under this Ordinance, subject to the provisions of Article 18 for the protection of confidential information.
2. The Training Organisation promptly places it in the publicly accessible archive:
 - a) All written orders and public notices relating to the enquiry;
 - b) All materials, including questionnaires, answers to questionnaires and written communications, issued by it or submitted to it;
 - c) All other information developed or obtained including any inspection report drawn up pursuant to Article 17;
 - d) The record of any hearing held pursuant to Article 20;
 - e) Any other documents you consider appropriate for public disclosure.
3. The public file is made available to the general public for consultation and copying at the respective offices throughout the investigation.

Article 22

Trust in available information

1. The Investigating Body may take decisions on the basis of the information available if at any time during the investigation an interested party participates:
 - a) Refusing access to the necessary information or failing to provide it within the time limit set by the Training Organisation;
 - b) Disturbing the conduct of the enquiry.
2. The Training Organisation assesses any difficulties experienced by participating stakeholders, including small businesses, in providing the requested information.
3. In the case referred to in the preceding paragraph, the instructing body shall provide all possible assistance and may extend the deadline for submitting any information.

CHAPTER V

SAFEGUARD MEASURES

SECTION I

PROVISIONAL SAFEGUARD MEASURES

Article 23

Application of the provisional safeguard measure

1. The provisional safeguard measure can only be applied if the Investigating Body concludes that:
 - a) The delay in adopting the measure could cause damage that is difficult to repair to the national economy;
 - b) There is sufficient evidence that, as a result of unforeseen events and the effect of Timor-Leste's obligations under the GATT 1994, the product under investigation is being imported in such large quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competing products.
2. The provisional safeguard measure exclusively takes the form of a refundable increase in customs duties.

Article 24

Notice on the application of the provisional safeguard measure

1. Immediately after taking a decision on the application of the provisional safeguard measure, the Investigating Body publishes a notice in the Official Gazette.
2. If the decision is to apply the provisional safeguard measure, the notice shall include the following information:
 - a) A full description of the product under investigation, including its technical characteristics and uses, as well as identification of its tariff classification and applicable duties;
 - b) The volume and value of the imported product for each of the three calendar years preceding the request, as well as any data for more recent partial years, by country of origin;
 - c) A full description of similar or directly competing domestic products, including their technical characteristics and uses;
 - d) The names of all known producers of similar or directly competing domestic products;
 - e) The basis for determining the circumstances in which the delay in definitively determining the safeguard measure is likely to cause damage that is difficult to repair;
 - f) The basis for determining whether there is clear evidence that, as a result of unforeseen events and the effect of obligations assumed by Timor-Leste under the GATT 1994, the product under investigation is being imported in such large quantities and under such conditions as to cause, or threaten to cause, serious injury to the domestic industry producing like or directly competing products;
 - g) The amount of the tariff increase was proposed as a provisional safeguard measure;
 - h) The deadline for applying the provisional safeguard measure.
3. If the Investigating Body decides not to apply a provisional safeguard measure, the notice shall include the following information:
 - a) A full description of the product under investigation, including its technical characteristics and uses, as well as identification of its tariff classification and applicable duties;
 - b) An identification of similar or directly competing national products;

- c) An explanation of the reasons justifying the decision not to apply a provisional safeguard measure;
 - d) A statement indicating whether the enquiry is closed at that point or whether it is continued to the final stage.
4. The decision will also be communicated to the members of the government responsible for finance, trade and industry.

Article 25

Notification and enquiries

1. Following the decision to apply the provisional safeguard measure, before the date proposed for it to take effect, the Government of Timor-Leste shall immediately notify the Committee, in accordance with the requirements established by the Committee.
2. As soon as the measure has been implemented, the consultations referred to in Article 12(4) of the Agreement shall be initiated.

Article 26

Duration of a provisional safeguard measure

A provisional safeguard measure is applied for a period not exceeding 200 days and may be suspended before its expiry date by decision of the Investigating Body.

Article 27

Payment and reimbursement of a provisional safeguard measure

1. The amount of a provisional safeguard measure is levied and paid in reimbursable form or guaranteed by the provision of a bond or deposit in favour of the Customs Authority.
2. Any amount collected as a provisional safeguard measure shall be promptly refunded, and any bond or deposit shall be promptly released, if the subsequent investigation does not result in a determination that the increased imports have caused or are threatening to cause serious injury to the domestic industry.
3. The department responsible for assessing and collecting provisional safeguard measures is the Customs Authority.

SECTION II
CONCLUSION OF THE SERIOUS INJURY OR THREAT INVESTIGATION
OF SERIOUS DAMAGE AND ITS JUSTIFICATION

Article 28
Determination of serious injury or threat of serious injury and
the causal link

1. The Investigating Body may determine, in accordance with Articles 5 and 6, on the basis of objective evidence obtained in the investigation, that increased imports of the product under investigation cause or threaten to cause serious injury to the domestic industry.
2. The determination referred to in the previous paragraph shall be set out in a report analysing in detail the information obtained in the investigation and presenting reasoned conclusions on all matters of fact and law, published by means of a notice in the Official Gazette.
3. The analysis referred to in the preceding paragraph includes a demonstration of the relevance of the factors examined by the Inspection Body.

Article 29
Public notice and notification of the decision on serious damage or the
threat of serious harm and the causal link

1. Immediately after reaching a conclusion, negative or affirmative, on the serious injury or threat of serious injury and the causal link, the Investigating Body publishes a notice of the decision in the Official Gazette.
2. The notice referred to in the previous paragraph includes:
 - a) a full description of the product under investigation, including its technical characteristics and uses, as well as identification of its tariff classification and applicable duties;
 - b) A full description of similar or directly competing domestic products, including their technical characteristics and uses;
 - c) The names of all known producers of similar or directly competing products on the domestic market.
 - d) The country or countries of origin of the product under investigation;
 - e) A summary of the information obtained in the enquiry, the factors considered and their relevance, as well as the results and conclusions on the questions of fact and law considered, and the reasons for them.

3. The Government of Timor-Leste shall immediately notify the Committee if the Investigating Body concludes that the increase in imports causes or threatens to cause serious injury to the domestic industry.
4. The notification referred to in the preceding paragraph shall be made in accordance with the requirements laid down by the Committee.

SECTION III

DEFINITIVE SAFEGUARD MEASURES

Article 30

General principle

1. The Training Body may apply the definitive safeguard measure when it concludes:
 - a) That, as a result of unforeseen events and the effect of the obligations assumed by Timor-Leste under the GATT 1994, the product under investigation is being imported in such large quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry manufacturing like or directly competing products;
 - b) That the application of a definitive safeguard measure is in the public interest.
2. The duration and level of such measures may not exceed what is necessary to prevent or remedy serious injury and facilitate adjustment.
3. In deciding to apply a definitive safeguard measure, the Investigating Body shall take into account the fact that, if it is not possible to agree on adequate trade compensation with members whose export interests would be affected by the measure, those members are free, in accordance with the Agreement, to suspend substantially equivalent concessions under the GATT 1994, provided that such suspension is not disapproved by the WTO Council for Trade in Goods.
4. The right to suspend equivalent concessions may not be exercised during the first three years of application of a safeguard measure, including the period of application of any provisional safeguard measure, provided that the measure was adopted following an absolute increase in imports.

Article 31

Notice on the application of a definitive safeguard measure

1. Immediately following the adoption of a decision to apply a definitive safeguard measure, the Investigating Body shall publish a notice of this decision in the Official Gazette.

2. If the decision is to apply a definitive safeguard measure, the notice contains the following information:
 - a) A full description of the product under investigation, including its technical characteristics and uses, as well as identification of its tariff classification and applicable duties;
 - b) The volume and value of the imported product for each of the three calendar years preceding the request, as well as any data for more recent partial years, by country of origin;
 - c) A full description of similar or directly competing products on the internal market, including their technical characteristics and uses;
 - d) The names of all known producers of similar or directly competing products on the domestic market;
 - e) A summary of the unforeseen events that have led to an increase in imports of the product under investigation or to a change in the conditions under which such imports take place;
 - f) The summary of the effects of the relevant obligations contracted by Timor-Leste under the GATT 1994;
 - g) The summary of the injury determination, including the injury factors considered and their relevance, as well as the conclusions and reasons justifying them, on issues of fact and law considered in relation to injury, or a cross-reference to the notice of determination of serious injury or threat of serious injury and causation;
 - h) The reasons why it has concluded that the application of a definitive safeguard measure is in the public interest;
 - i) Detailed information on the national industry adjustment plan;
 - j) The form, level and duration of the definitive safeguard measure and an explanation of it in the light of the requirements of Article 30 and the national industry adjustment plan;
 - k) The date for the implementation of the definitive safeguard measure;
 - l) If the decision is for a quantitative restriction, the allocation of the quota among the supplier countries and an explanation and the information available, in the light of Article 35, as to the reasons for the allocation of the quota;
 - m) A timetable for the progressive liberalisation of the measure if its duration, including the period of application of the provisional safeguard measure, exceeds one year;
 - n) The identification of developing countries exempted from the measure.
3. If the decision is not to apply the definitive safeguard measure, the notice sets out the factual and legal basis for the decision.
4. The decision is communicated to the members of the government responsible for finance, trade and industry.

Article 32

Notification and consultation

1. Immediately after the decision to apply the definitive safeguard measure, but before its entry into force, the Government of Timor-Leste shall notify the Committee of the evidence of serious

injury or threat of serious injury caused by the increase in imports, the exact description of the product under investigation, the form, level and duration of the proposed measure, the proposed date of implementation of the measure and, where appropriate, the proposed timetable for its progressive liberalisation.

2. The notification fulfils the requirements established by the Committee.
3. Prior to the implementation of a definitive safeguard measure, the Government of Timor-Leste shall provide an appropriate opportunity for consultations with members having a substantial interest as exporters of the product under investigation, with a view, inter alia, to analysing the information notified to the Committee regarding the finding of serious injury or threat of serious injury caused by increased imports and regarding the proposed measure, exchanging views on the measure and reaching agreement on how to achieve the objective set out in the following paragraph.
4. When applying a definitive safeguard measure, the government endeavours to maintain a level of concessions and other obligations substantially equivalent to that existing under the GATT 1994 between Timor-Leste and the exporting members affected by the measure.
5. For the purpose of maintaining a substantially equivalent level of concessions and other obligations as referred to in the preceding paragraph, agreement may be reached with the affected members, through the consultations referred to in paragraph 3, on any appropriate means of trade compensation for the adverse effects of the definitive safeguard measure on trade of those members.
6. The Government of Timor-Leste shall immediately notify the WTO Council for Trade in Goods, through the Committee, of the results of the consultations, including any compensation granted.

Article 33

Form and application of the definitive safeguard measure

1. The definitive safeguard measure is applied in the form of:
 - a) Tariff increase; or
 - b) Import quota, subject to quantitative restriction.
2. Without prejudice to Article 34, any definitive safeguard measure shall apply to all imports of the product under investigation, regardless of their origin, made from the date on which the measure takes effect.
3. The department responsible for monitoring the definitive safeguard measure in the form of a tariff increase is the Customs Authority.
4. The department responsible for managing the definitive safeguard measure in the form of a quantitative import restriction is the Directorate General for Trade.

Article 34
Inapplicability of the definitive safeguard measure to
certain developing countries

1. Without prejudice to other provisions of this Decree-Law, the definitive safeguard measure shall not apply to imports of the product under investigation originating in a developing member country, provided that such imports do not represent more than three per cent of the total imports from Timor-Leste of the product under investigation.
2. Without prejudice to the provisions of the previous paragraph, in the event that imports from more than one developing country, individually considered, account for less than three per cent of imports of the product under investigation, but, when considered collectively, account for more than nine per cent of all imports, the definitive safeguard measure may be applied to imports from these member developing countries.
3. In the case referred to in the previous paragraph, the government shall notify the WTO Committee on Safeguards of the reasons for not applying the definitive safeguard measure to imports originating in a developing country member, in accordance with the requirements established by the Committee.

Article 35
Quota as a definitive safeguard measure

1. The definitive safeguard measure in the form of a quota on imports of the product under investigation may not reduce the quantity of such imports below the average level recorded in the last three years for which statistics are available.
2. Without prejudice to the provisions of the preceding paragraph, the Investigating Body may, on clear grounds as to whether a different censure is necessary to prevent or remedy the serious injury or threat of serious injury, apply a quota that reduces the quantity of imports of the product under investigation to a level below the average level recorded in the last three years for which statistics are available.
3. If more than one country exports the product under investigation to Timor-Leste, the import quota is divided between the supplier countries.
4. It is up to the government to endeavour to reach agreement with the member countries that have an interest in supplying the product under investigation on the distribution of the shares of the total quota.
5. If the Investigating Body determines that the method provided for in paragraph 3 is not

reasonably practicable for allocating the quota, it shall allocate the quota among the countries with a substantial interest in maintaining the supply of the product under investigation.

6. The breakdown referred to in the previous paragraph shall be based on the proportion of the product under investigation supplied by those countries during the previous three years.
7. When allocating the quota among the supplier countries, the Investigating Body assesses any special factors that may have affected or may subsequently affect trade in the product under investigation.
8. Without prejudice to the provisions of paragraphs^s 3 and 4, in the event of serious injury to the national industry, the Investigating Body may allocate the quota among the supplier countries on a different basis, provided that consultations have been held with the supplier members under the auspices of the Committee and that the latter has clearly demonstrated that:
 - a) Imports from certain countries increased by a percentage disproportionate to the total increase in imports of the product under investigation during the representative period;
 - b) The reasons for the deviation from the quota allocation method provided for in paragraphs^s 3 and 4 shall be justified;
 - c) The terms of the deviation referred to in the previous paragraph shall be fair to all suppliers of the product in question.
9. Without prejudice to Article 40, the period of implementation of the definitive safeguard measure in the form of a quota allocated on the alternative basis provided for in paragraph 5 shall not be extended.

Article 36

Notification if the investigation is closed without application of a safeguard measure

When, at any time during an investigation, the Investigating Body closes the investigation without applying a definitive safeguard measure, in particular in the event of a negative finding of serious injury or in the event that it is determined that the application of a definitive safeguard measure is not in the public interest, the Government shall immediately notify the Committee, in accordance with the requirements established by the Committee.

Article 37

Duration of a definitive safeguard measure

1. The definitive safeguard measure shall be applied for a period not exceeding four years, including the period of application of the provisional measure, unless it is extended in accordance with Article 40.

2. The total duration of a definitive safeguard measure, including the period of implementation of the provisional measure and the period of initial application and any extension pursuant to Article 40, shall not exceed eight years, in accordance with Articles 7(3) and 9(2) of the Agreement.

Article 38

Progressive liberalization

A definitive safeguard measure whose period of application exceeds one year shall be progressively liberalised at regular intervals during the period of its application, in accordance with the timetable published in the notice on the application of the definitive safeguard measure provided for in Article 31.

Article 39

Review

1. If the duration of the implementation of the definitive safeguard measure, including the period of implementation of the provisional measure, exceeds three years, the Investigating Body shall re-examine the situation after half of that period has elapsed, in accordance with the procedures set out in Articles 14 to 22 of this Decree-Law, mutatis mutandis, by re-analysing the effects of the definitive safeguard measure on the domestic industry in question and the progress made in implementing its adjustment plan.
2. The results of the review are published in the Official Gazette by means of a notice based on the report drawn up by the Investigating Body and, on the basis of the results of the review, the Investigating Body decides to maintain or revoke the definitive safeguard measure or to increase the pace of its liberalisation.
3. The notice on the decision to maintain, liberalise or revoke a definitive safeguard measure, summarising the results of the review, is published in the Official Gazette.
4. The content of the notice referred to in the previous paragraph fulfils the requirements of the notice on the application of a definitive safeguard measure provided for in Article 31.
5. The Government shall notify the results of the review, including the revocation or any amendment of the definitive safeguard measure, to the WTO Council for Trade in Goods, through the Committee, in accordance with the requirements established by the Committee.

SECTION IV

EXTENSION AND RE-APPLICATION OF DEFINITIVE SAFEGUARD MEASURES

Article 40

Extension of a definitive safeguard measure

1. In the event that the domestic industry considers that it is still necessary to apply the definitive safeguard measure beyond the initial period of its implementation, it submits a written request for an extension of the measure to the Inspection Body, including evidence that the industry is implementing its adjustment plan, no later than 180 days before the end of this period.
2. The Investigating Body carries out an enquiry to determine whether the extension is justified.
3. For the purposes of the enquiry and determination referred to in the previous paragraph, the procedures laid down in this statute for the application of the provisional safeguard measure shall be observed *mutatis mutandis*.
4. Without prejudice to Article 35 (6), the safeguard measure may be extended once, for a period not exceeding four years.
5. The Investigating Body may only extend the definitive safeguard measure if it determines, through the investigation referred to in paragraph 1, that the measure is still necessary to prevent or remedy serious injury and that there is evidence that the domestic industry is progressively adapting.
6. The extended definitive safeguard measure cannot be more restrictive than at the end of the initial period of application.
7. During the extension period, the measure continues to be progressively liberalised, in accordance with the extension schedule published in a notice in the Official Gazette.
8. The notice referred to in the previous paragraph fulfils the requirements of the notice of application of a definitive safeguard measure, provided for in Article 31.
9. By extending the definitive safeguard measure, the Government endeavours to maintain a level of concessions and other obligations substantially equivalent to that existing under the GATT 1994 between Timor-Leste and the exporting members that would be affected by these measures.
10. The requirements regarding notifications to the WTO Committee and Council for Trade in Goods, set out in Articles 14, 25, 29, 32, 34, 35 and 36, as well as the requirements regarding consultations with exporting members whose interests would be affected by the measure, set out in Articles 25, 32 and 35, apply in full to any extension of the safeguard measure.

Article 41

Reapplication of a safeguard measure

1. No new safeguard measure shall be reapplied in relation to the import of a product that was the subject of a definitive safeguard measure applied for the first time after 1 January 1995, for a period equal to half the duration of that measure, provided that the period of non-application is at least two years.
2. Without prejudice to paragraph 1, a safeguard measure of a duration of 180 days or less may be applied to imports of a product under investigation that has been the subject of a previous safeguard measure when:
 - a) At least one year has elapsed since the date of application of the previous safeguard measure on imports of that product;
 - b) A safeguard measure has not been applied to imports of the product more than twice in the five-year period immediately preceding the date on which the new safeguard measure may take effect.

CHAPTER VI FINAL PROVISIONS

Article 42 International obligations

This Order shall be applied in accordance with Timor-Leste's obligations under the Agreement establishing the World Trade Organisation, concluded in Marrakesh on 15 April 1994, including the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Safeguards annexed thereto.

Article 43 Subsidiary application

The rules of procedure for the application of the safeguard measures established in this statute shall apply, in the alternative, with the necessary adaptations, to the provisions of the General Administrative Offences Regime.

Article 44 Regulations

The Government may adopt the necessary regulations for the implementation of this statute, under the terms set out therein.

Article 45 Entry into force

This decree enters into force on the 90th day after its publication.

Approved by the Council of Ministers on ____ of _____ of _____

The Prime Minister

Kay Rala Xanana Gusmão

Coordinating Minister for Economic Affairs

Francisco Kalbuadi Lay

The Minister of Finance

Santina José Rodrigues Ferreira Viegas Cardoso

The Minister for Trade and Industry

Filipus Nino Pereira

Promulgated on ____ of _____ of _____

To be published.

The President of the Republic,

José Ramos-Horta