

**ANNEX VI**

**THE EAST AFRICAN COMMUNITY CUSTOMS  
UNION  
(SAFEGUARD MEASURES)  
REGULATIONS**

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(SAFEGUARD MEASURES) REGULATIONS**

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# **THE EAST AFRICAN COMMUNITY CUSTOMS UNION (SAFEGUARD MEASURES) REGULATIONS**

## **REGULATION 1 Citation**

These Regulations may be cited as East African Community Customs Union (Safeguard Measures) Regulations.

## **REGULATION 2 Purpose of the Regulations**

The purpose of these Regulations is to implement the provisions of Article 19 of the Protocol and to ensure that there is uniformity among Partner States in the application of safeguard measures and that to the extent possible the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.

## **REGULATION 3 Interpretation**

In these Regulations, unless the context otherwise requires:

**"Committee"** means the East African Community Committee on Trade Remedies established by Article 24 of the Protocol;

**"investigating authority"** means the authority designated as such by a Partner State and charged with the responsibility of conducting investigations within the territory of that Partner State on behalf of the Committee;

**"Partner States"** means the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda and any other country granted membership to the Community under Article 3 of the Treaty;

**"Protocol"** means the Protocol on the Establishment of the East African Community Customs Union;

**"safeguard measures"** means protective measures taken by a Partner State to prevent serious injury to the Partner State's economy as provided under these Regulations;

**"Secretary General"** means the Secretary General of the East African Community appointed under Article 67 of the Treaty for the Establishment of the East African Community.

#### **REGULATION 4** **Conditions for Applying Safeguard Measures**

1. Safeguard measures shall be applied to any product imported into the territory of a Partner State irrespective of its source.
2. A Partner State may, after causing investigations, apply safeguard measures where that Partner State has determined that a product is imported into the territory of that Partner State in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

#### **REGULATION 5** **Investigations**

1. A Partner State may apply safeguard measures only following an investigation by the investigating authority of that Partner State.
2. The investigating authority shall give public notice of the investigation to all interested parties. The investigation shall include public hearings or procedures by which all interested parties may present evidence and their views including the opportunity to respond to the presentation of other parties and to submit their views as to whether or not the application of safeguard measures would be in the public interest.
3. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the investigating authority and shall not be disclosed without the permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries of the information or, where the parties indicate that the information cannot be summarized, the reasons why a summary cannot be provided.
4. Where the investigating authority finds that a request for confidentiality is not warranted and where the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the investigating authority may disregard the information unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.
5. The investigating authority shall immediately after investigation publish a report setting out the findings and conclusions reached on all pertinent issues of fact and law and giving a detailed analysis of the case under investigation and a demonstration of the relevance of the factors examined.

**REGULATION 6**  
**Determination of Serious Injury or Threat of Serious Injury**

1. For purposes of these Regulations:
  - (a) "**serious injury**" means a significant overall impairment in the position of the domestic industry of a Partner State, determined basing on facts;
  - (b) "**threat of serious injury**" means serious injury that is clearly imminent, determined basing on facts and not merely on allegation, conjecture or remote possibility; *and*
  - (b) in determining serious injury or threat of serious injury, "domestic industry" means the producers as a whole of the like or directly competitive products operating within the territory of a Partner State, or products whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.
2. In determining serious injury or threat of serious injury to the domestic industry of a Partner State under these Regulations, the investigating authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry and in particular, the rate and amount of the increase in imports of the product concerned, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.
3. The determination referred to in paragraph 2 shall not be made unless the investigation demonstrates on the basis of objective evidence that there exists a causal link between increased imports of the product concerned and serious injury or threat of serious injury to the domestic industry.

**REGULATION 7**  
**Application of Safeguard Measures**

1. A Partner State shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.
2. Safeguard measures shall be non-discriminatory.
3. Where a quantitative restriction is used, 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.
4. Where a quota is allocated among supplying countries, the Partner State applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Partner States with substantial interest in supplying the product concerned. Where this method is not reasonably practicable, the Partner State concerned shall allot shares to the Partner States with substantial interest in supplying the product based upon the proportions supplied by such Partner States during a previous representative period of the total quantity or value of imports of the product and in such cases, due account shall be taken of any special factors which may have affected or may be affecting trade in the product.

## **REGULATION 8**

### **Provisional Safeguard Measures**

1. In critical circumstances where delay would cause damage which would be difficult to remedy, a Partner State may take provisional safeguard measures pursuant to a preliminary determination that there is clear evidence that

increased imports have caused or are threatening to cause serious injury to the domestic industry of that Partner State.

2. The duration of any provisional safeguard measure shall not exceed two hundred days.
3. The requirements for determination of injury and threat of serious injury under Regulation 6 shall be complied with during the duration of application of provisional safeguard measures.
4. Provisional safeguard measures shall take the form of tariff increases to be promptly refunded where the subsequent investigation referred to in paragraph 2 of Regulation 6 does not determine that increased imports have caused or threaten to cause serious injury to the domestic industry and the duration of such provisional safeguard measure shall be counted as a part of the initial period and any extension referred to in paragraph 2 of Regulation 9.

## **REGULATION 9**

### **Duration and Review of Safeguard Measures**

1. A Partner State shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.
2. The safeguard measures taken under paragraph 1 of this Regulation shall remain in force for a period of one year but may be extended annually for three years by a decision of the Council where the Partner State concerned proves that the safeguard measures continue to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting.



3. The total period of application of a safeguard measure including the period of application of any provisional safeguard measure, the period of initial application and any extension of any of these records shall not exceed three years.
4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure notified under the provisions of paragraph 1 of Regulation 10 is less than six months, the Partner State applying the safeguard measure shall progressively liberalise it at regular intervals during the period of application.
5. Where the duration of a safeguard measure exceeds one year, the Partner State applying such a safeguard measure shall review the situation not later than the mid-term period of the safeguard measure and, where appropriate, withdraw it or increase the pace of liberalisation. A safeguard measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and shall continue to be liberalised.
6. A safeguard measure with a duration of not more than one hundred and eighty days may be applied again to the import of a product where:
  - (a) at least one year has elapsed since the date of introduction of the safeguard measure on the import of that product; and
  - (b) that safeguard measure has not been applied on the same product more than twice in the three-year period immediately preceding the date of introduction of the safeguard measure.

### **REGULATION 10**

#### **Notification and Consultation**

1. A Partner State shall immediately notify the Committee upon:

- (a) initiating an investigation relating to serious injury or threat of serious injury and the reasons for the investigation;
  - (b) making a finding of serious injury or threat of serious injury caused by increased imports; and
  - (c) taking a decision to apply or need to extend safeguard measures.
- 2. In making the notifications referred to in paragraph 1 (b) and 1(c) of this Regulation, the Partner State intending to apply or extend a safeguard measure shall provide the Committee with all relevant information, which shall include evidence of serious injury or threat of serious injury caused by increased imports, a precise description of the product involved and the proposed safeguard measure, the proposed date of introduction, the expected duration and the timetable for progressive liberalization. In the case of an extension of a safeguard measure, evidence that the industry concerned is adjusting shall also be provided.
- 3. The Committee may request additional information as it may consider necessary from the Partner State proposing to apply or extend the safeguard measure.
- 4. A Partner State intending to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the Partner States with substantial interest as exporters of the product concerned, with a view, to reviewing the information provided under paragraph 2, exchanging views on the safeguard measure and reaching an understanding on ways to achieve the objectives of the safeguard measure.
- 5. A Partner State shall notify the Committee before taking a provisional safeguard measure referred to in Regulation 8. Consultations shall be initiated immediately after the provisional safeguard measure is taken.

6. The results of the consultations referred to in this Regulation and other obligations shall be notified immediately to the Committee by the Partner State concerned.
7. The Partner States shall promptly notify the Committee of their laws, regulations and administrative procedures relating to safeguard measures as well as any modification made on the laws, regulations and administrative procedures.
8. Any Partner State may notify the Committee of all laws, regulations, administrative procedures and any safeguard measure or actions dealt with under these Regulations, that have not been notified by the concerned Partner State where it is required by these Regulations to make such notifications.
9. All notifications to the Committee referred to in these Regulations shall be made through the Secretary General.
10. A Partner State shall not be required to disclose confidential information, the disclosure of which would impede law enforcement or which is contrary to public interest or which would prejudice the legitimate commercial interests of public or private enterprises.

## **REGULATION 11**

### **Functions of the Committee**

The Committee shall, in addition to the functions in Article 24 of the Protocol, have the following functions:

- (a) upon request by an affected Partner State, determine whether or not the procedural requirements of these Regulations have been complied with and report its findings to the Council;

- (b) notify the Council of all decisions by Partner States to apply or extend safeguard measures; and
- (c) perform any other functions connected with these Regulations as the Council may determine.

**REGULATION 12**  
**Dispute Settlement**

The provisions of the East African Community Customs Union (Dispute Settlement Mechanism) Regulations shall apply to the settlement of disputes under these Regulations.