



2 September 2013
2 September 2013
P.U. (A) 279

WARTA KERAJAAN PERSEKUTUAN

FEDERAL GOVERNMENT GAZETTE

PERATURAN-PERATURAN PELINDUNG (PERJANJIAN
PERDAGANGAN BARANGAN BAGI PERJANJIAN RANGKA
KERJA KERJASAMA EKONOMI KOMPREHENSIF ANTARA
PERTUBUHAN BAGI NEGARA-NEGARA ASIA TENGGARA
DAN CHINA (LANGKAH PERLINDUNGAN)) 2013

*SAFEGUARDS (AGREEMENT ON TRADE IN GOODS OF THE
FRAMEWORK AGREEMENT ON COMPREHENSIVE
ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION
OF SOUTHEAST ASIAN NATIONS AND CHINA
(SAFEGUARD MEASURE)) REGULATIONS 2013*



DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

AKTA PELINDUNG 2006

PERATURAN-PERATURAN PELINDUNG (PERJANJIAN PERDAGANGAN BARANGAN BAGI PERJANJIAN RANGKA KERJA KERJASAMA EKONOMI KOMPREHENSIF ANTARA PERTUBUHAN BAGI NEGARA-NEGARA ASIA TENGGARA DAN CHINA (LANGKAH PERLINDUNGAN)) 2013

PADA menjalankan kuasa yang diberikan oleh subseksyen 40A(2) Akta Pelindung 2006 [Akta 657], Menteri membuat peraturan-peraturan yang berikut:

Nama dan permulaan kuat kuasa

1. (1) Peraturan-peraturan ini bolehlah dinamakan **Peraturan-Peraturan Pelindung (Perjanjian Perdagangan Barangan bagi Perjanjian Rangka Kerja Kerjasama Ekonomi Komprehensif antara Pertubuhan bagi Negara-Negara Asia Tenggara dan China (Langkah Perlindungan)) 2013.**

(2) Peraturan-Peraturan ini mula berkuat kuasa pada 2 September 2013.

Tafsiran

2. Dalam Peraturan-Peraturan ini—

“ACFTA” ertinya Kawasan Perdagangan Bebas ASEAN-China;

“China” ertinya Republik Rakyat China;

“MFN” ertinya layanan *most-favoured-nation*;

“Perjanjian” ertinya Perjanjian Perdagangan Barangan bagi Perjanjian Rangka Kerja Kerjasama Ekonomi Komprehensif antara Pertubuhan bagi Negara-Negara Asia Tenggara dan China yang ditandatangani pada 29 November 2004 di Vientiane, Lao PDR;

“Perjanjian Rangka Kerja” ertinya Perjanjian Rangka Kerja Kerjasama Ekonomi Komprehensif antara Pertubuhan bagi Negara-Negara Asia Tenggara dan China yang ditandatangani pada 4 November 2002 di Phnom Penh, Cambodia;

“Pihak” ertinya suatu pihak kepada Perjanjian Rangka Kerja Kerjasama Ekonomi Komprehensif antara Pertubuhan bagi Negara-Negara Asia Tenggara dan China secara individu merujuk kepada Negara Anggota ASEAN atau China;

“Pihak-Pihak” ertinya pihak kepada Perjanjian Rangka Kerja Kerjasama Ekonomi Komprehensif antara Pertubuhan bagi Negara-Negara Asia Tenggara dan China.

Objektif

3. Objektif Peraturan-Peraturan ini adalah untuk melaksanakan peruntukan mengenai langkah perlindungan di bawah Perjanjian.

Langkah perlindungan

4. Pengegaan langkah perlindungan berhubung dengan peningkatan import keluaran daripada negara Pertubuhan bagi Negara-Negara Asia Tenggara dan China yang telah menyebabkan atau mengancam untuk menyebabkan kemudaratan yang serius bagi industri dalam negeri adalah tertakluk kepada peruntukan Jadual.

JADUAL

[Peraturan 4]

Langkah Perlindungan

1. Setiap Pihak, yang menjadi ahli WTO, mengekalkan hak dan obligasinya di bawah Artikel XIX GATT 1994 dan Perjanjian tentang Pelindung WTO.

2. Berkenaan dengan langkah perlindungan ACFTA, suatu Pihak hendaklah mempunyai hak untuk memulakan langkah itu ke atas suatu produk dalam tempoh transisi bagi produk itu. Tempoh transisi suatu produk hendaklah bermula dari tarikh kuat kuasa Perjanjian itu dan tamat lima tahun dari tarikh penghapusan/penurunan tarif selesai bagi produk itu.

3. Suatu Pihak hendaklah bebas untuk mengambil langkah perlindungan ACFTA sekiranya sebagai kesan obligasi yang ditanggung oleh Pihak itu, termasuk konsesi tarif di bawah *Early Harvest Programme* bagi Perjanjian Rangka Kerja atau Perjanjian itu, atau, sekiranya sebagai akibat pembangunan yang tidak dijangka dan sebagai kesan obligasi yang ditanggung oleh Pihak itu, termasuk konsesi tarif di bawah *Early Harvest Programme* bagi Perjanjian Rangka Kerja atau Perjanjian itu, import mana-mana produk tertentu daripada Pihak-Pihak lain meningkat dalam apa-apa kuantiti, secara mutlak atau relatif kepada pengeluaran dalam negeri, dan di bawah apa-apa keadaan yang akan menyebabkan atau mengancam untuk menyebabkan kemudaratan serius kepada industri dalam negeri Pihak pengimport yang mengeluarkan keluaran serupa atau yang bersaing secara langsung.
4. Sekiranya suatu langkah perlindungan diambil, suatu Pihak yang mengambil langkah itu boleh menaikkan kadar tarif yang terpakai bagi produk berkenaan kepada kadar tarif WTO MFN yang terpakai bagi produk itu semasa langkah itu diambil.
5. Apa-apa langkah perlindungan boleh dikekalkan bagi suatu tempoh permulaan sehingga 3 tahun dan boleh dilanjutkan bagi suatu tempoh tidak lebih 1 tahun. Walau apa pun tempoh bagi langkah perlindungan ACFTA bagi suatu produk, langkah itu hendaklah ditamatkan di akhir tempoh transisi bagi produk itu.
6. Apabila mengenakan langkah perlindungan ACFTA, Pihak-Pihak hendaklah menerima pakai kaedah-kaedah bagi pengenalan langkah perlindungan sebagaimana yang diperuntukkan di bawah Perjanjian tentang Pelindung WTO, dengan kecualian langkah sekatan kuantitatif yang dinyatakan dalam Perkara 5, 9, 13 dan 14 Perjanjian tentang Pelindung WTO. Oleh itu, semua peruntukan lain Perjanjian tentang Pelindung WTO hendaklah, *mutatis mutandis*, dimasukkan ke dalam dan menjadi suatu bahagian integral Perjanjian.
7. Langkah perlindungan ACFTA tidak dikenakan terhadap suatu produk yang berasal daripada suatu Pihak, selagi bahagian import produk berkenaan dalam negara Pihak pengimport tidak melebihi 3% jumlah import daripada Pihak-Pihak.
8. Dalam menuntut pampasan di bawah Perkara 8 Perjanjian tentang Pelindung WTO bagi suatu langkah perlindungan ACFTA, Pihak-Pihak hendaklah meminta jasa baik badan yang disebut dalam perenggan 12 untuk menentukan taraf konsesi yang setara penting terlebih dahulu bagi apa-apa penanguhan konsesi yang setara. Apa-apa prosiding yang berpunca daripada jasa baik itu hendaklah diselesaikan dalam 90 hari dari tarikh langkah perlindungan ACFTA itu dikenakan.
9. Apabila suatu Pihak menamatkan langkah perlindungan ACFTA ke atas suatu produk, kadar tarif bagi produk itu hendaklah pada kadar yang, mengikut jadual pengurangan dan penghapusan tarif Pihak itu,

sebagaimana yang diperuntukkan dalam Lampiran 1 dan Lampiran 2 Perjanjian, akan berkuat kuasa mulai 1 Januari pada tahun yang langkah perlindungan itu ditamatkan.

10. Semua komunikasi dan dokumentasi rasmi yang ditukarkan antara Pihak-Pihak dan kepada badan yang disebut dalam perenggan 12 yang berhubungan dengan mana-mana langkah perlindungan ACFTA hendaklah dibuat secara bertulis dan hendaklah dalam bahasa Inggeris.

11. Apabila mengenakan langkah perlindungan ACFTA, suatu Pihak tidak boleh mengambil tindakan serentak bagi langkah perlindungan WTO yang disebut di perenggan 1.

12. Bagi maksud perenggan 12 perkara 9 Perjanjian, apa-apa sebutan mengenai “Majlis bagi Perdagangan Barangan” atau “Jawatankuasa tentang Pelindung” dalam peruntukan yang dimasukkan bagi Perjanjian tentang Pelindung WTO hendaklah, sementara menunggu penubuhan suatu badan kekal di bawah perenggan 1 Perkara 16 Perjanjian itu, merujuk kepada AEM-MOFCOM, atau SEOM-MOFCOM, sebagaimana yang berpatutan, yang hendaklah digantikan dengan badan kekal apabila ia ditubuhkan.

Dibuat 26 Julai 2013

[MITI:ID/AP/(S)/SG/1; PN(PU2)647/II]

DATO' SRI MUSTAPA BIN MOHAMED
Menteri Perdagangan Antarabangsa dan Industri

SAFEGUARDS ACT 2006

SAFEGUARDS (AGREEMENT ON TRADE IN GOODS OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND CHINA (SAFEGUARD MEASURE)) REGULATIONS 2013

IN exercise of the powers conferred by subsection 40A(2) of the Safeguards Act 2006 [Act 657], the Minister makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the **Safeguards (Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and China (Safeguard Measure)) Regulations 2013**.

(2) These Regulations come into operation on 2 September 2013.

Interpretation

2. In these Regulations—

“ACFTA” means the ASEAN-China Free Trade Area;

“China” means the People’s Republic of China;

“MFN” means most-favoured-nation treatment;

“Agreement” means the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and China signed on 29 November 2004 at Vientiane, Lao PDR;

“Framework Agreement” means the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and China signed on 4 November 2002 at Phnom Penh, Cambodia;

“Party” means a party to the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and China individually referring to an ASEAN Member State or to China;

“Parties” means the parties to the Framework Agreement on Comprehensive Economic Co-operation between the Association of Southeast Asian Nations and China.

Objective

3. The objective of these Regulations is to implement the provisions of the safeguard measure under the Agreement.

Safeguard measure

4. The application of the safeguard measure in relation to the increased import of the products imported from the Association of Southeast Asian Nations and China which have caused or threaten to cause serious injury to a domestic industry is subject to the provisions of the Schedule.

SCHEDULE

[Regulation 4]

Safeguard Measure

1. Each Party, which is a WTO member, retains its rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

2. With regard to ACFTA safeguard measure, a Party shall have the right to initiate such a measure on a product within the transition period for that product. The transition period for a product shall begin from the date of entry into force of the Agreement and end five years from the date of completion of tariff elimination/reduction for that product.

3. A Party shall be free to take ACFTA safeguard measure if as an effect of the obligations incurred by that Party, including tariff concessions under the Early Harvest Programme of the Framework Agreement or the Agreement, or, if as a result of unforeseen developments and of the effects of the obligations incurred by that Party, including tariff concessions under the Early Harvest Programme of the Framework Agreement or the Agreement, imports of any particular product from the other Parties increase in such quantities, absolute or relative to domestic production, and under such conditions so as to cause or threaten to cause serious injury to the domestic industry of the importing Party that produces like or directly competitive products.

4. If an ACFTA safeguard measure is taken, a Party taking such a measure may increase the tariff rate applicable to the product concerned to the WTO MFN tariff rate applied to such product at the time when the measure is taken.

5. Any ACFTA safeguard measure may be maintained for an initial period of up to 3 years and may be extended for a period not exceeding 1 year. Notwithstanding the duration of an ACFTA safeguard measure on a product, such measure shall terminate at the end of the transition period for that product.

6. When applying ACFTA safeguard measure, the Parties shall adopt the rules for the application of safeguard measure as provided under the WTO Agreement on Safeguards, with the exception of the quantitative restriction measure set out in Articles 5, 9, 13 and 14 of the WTO Agreement on Safeguards. As such, all other provisions of the WTO Agreement on Safeguards shall, *mutatis mutandis*, be incorporated into and form an integral part of the Agreement.

7. An ACFTA safeguard measure shall not be applied against a product originating in a Party, so long as its share of imports of the product concerned in the importing Party does not exceed 3% of the total imports from the Parties.

8. In seeking compensation under Article 8 of the WTO Agreement on Safeguards for an ACFTA safeguard measure, the Parties shall seek the good offices of the body referred to in paragraph 12 to determine the substantially equivalent level of concessions prior to any suspension of equivalent concessions. Any proceedings arising from such good offices shall be completed within 90 days from the date on which the ACFTA safeguard measure was applied.

9. On a Party's termination of an ACFTA safeguard measure on a product, the tariff rate for that product shall be the rate that, according to that Party's tariff reduction and elimination schedule, as provided in Annex 1 and Annex 2 of the Agreement, would have been in effect commencing on 1 January of the year in which the safeguard measure is terminated.

10. All official communications and documentations exchanged among the Parties and to the body referred to in paragraph 12 relating to any ACFTA safeguard measure shall be in writing and shall be in the English language.

11. When applying ACFTA safeguard measure, a Party shall not have simultaneous recourse to the WTO safeguard measure referred to in paragraph 1.

12. For the purpose of paragraph 12 of article 9 of the Agreement, any reference to “Council for Trade in Goods” or the “Committee on Safeguards” in the incorporated provisions of the WTO Agreement on Safeguards shall, pending the establishment of a permanent body under paragraph 1 of Article 16 of the Agreement, refer to the AEM-MOFCOM, or the SEOM-MOFCOM, as appropriate, which shall be replaced by the permanent body once it is established.

Made 26 July 2013

[MITI:ID/AP/(S)/SG/1; PN(PU2)647/II]

DATO' SRI MUSTAPA BIN MOHAMED
Minister of International Trade and Industry