

Extended Safeguard Measures of Indonesian Government in Sections I and H of Other Alloy Steel Due to Serious Losses

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Abstract. In 2021, an application for the extension of safeguard measures was submitted for the I and H section products of other alloy steels due to serious injury. This study aims to analyze whether the serious injury suffered by the Petitioners meets the elements of Article XIX of the GATT (General Agreement on Tariffs and Trade) 1994 and Article 4 of the Agreement on Safeguards and to analyze whether it is possible to extend the safeguard measures for the next 3 to 4 years based on Article 7 and Article 9 of the Agreement on Safeguards. The method used in solving these problems is a normative juridical approach. Based on the results of the research, the serious injury suffered by the Petitioners has fulfilled the elements in Article XIX of the GATT 1994 and Article 4 of the Agreement on Safeguards, and the extension of safeguard measures can be carried out for 3 to 4 years in accordance with Article 7 and Article 9 Agreement on Safeguards.

Keywords: Agreement on Safeguards (ASG), Serious losses, Steel trade GATT, WTO, Indonesia.

1 Introduction

The existence of trade liberalization sometimes has a negative impact, one of which is the increase in imported products in a country. The surge in imported products, if it occurs continuously, can result in serious losses or become a threat to the domestic industry [1, 2]. In dealing with this matter, GATT (General Agreement on Tariffs and Trade) 1994 facilitated a policy in Article XIX related to trade remedies in the form of a security measure or protection due to the negative impacts caused by international trade [3, 4]. The trade remedies are in the form of safeguards, one of the trade policy instruments similar to antidumping and anti-subsidy policies [5, 6]. Safeguards or security measures are instruments that WTO member countries can use to protect domestic industries in the event of a surge in imports causing serious losses or threats of serious losses [7, 8].

Safeguards or security measures are regulated in Article XIX of the GATT 1994 and the Agreement on Safeguards. Although Article XIX does not explicitly explain the word safeguard, Article XIX describes actions that a country can take in the event of an emergency on certain products, namely if unforeseen development or unexpected circumstances occur that cause a surge in imports of an item and can harm or threaten the product. Domestically, a country may ignore the provisions of the 1994 GATT for a certain time.

To carry out a security measure or safeguard, a domestic product must meet certain elements in accordance with the provisions of Article 2 of the Agreement on Safeguards,

namely that there is a surge in imports, both absolute and relative, which causes serious losses or threats of serious losses to similar products of domestic industry.

In Indonesia, safeguards are carried out by the Indonesian Trade Security Committee (KPPPI/ *Komite Pengamanan Perdagangan Indonesia*), referring to Article XIX of the GATT 1994 and enhanced by the Agreement on Safeguards. The national regulations governing security measures are Law No. 17 of 2006 concerning Amendments to Law No. 10 of 1995 concerning Customs, Government Regulation of the Republic of Indonesia No. 34 of 2011 concerning Antidumping Measures, Compensation Measures, and Trade Safeguard Measures, and Decrees President No. 84 of 2002 concerning Measures for Safeguarding Domestic Industries from the Consequences of a Spike in Imports [5].

One of the ongoing investigation processes is the application for the extension of the security measures on products I and H section of other alloy steels starting on February 4, 2021. In this case, the applicant, on behalf of PT. Gunung Raja Paksi, Tbk which was previously PT. Garuda has a large proportion of the overall production of I and H section of other alloy steels. The steel combined with various elements that aim to improve the mechanical properties of the metal which is 97.7% in the period May 2019 – April 2020, thus qualifying as an industry domestically based on Article 4 paragraph (1) letter c of the Agreement on Safeguards which states that the domestic industry must be understood as a producer that produces similar goods or like products and has a large proportion of the total domestic production of these goods. There are also national regulations, namely Article 1 No. 18 of Government Regulation No. 34 of 2011 concerning Antidumping Measures, Compensation Measures, and Trade Safeguard Measures.

Previously, the I and H section products of other alloy steels had been taken security measures by the Indonesian government from 2015 to 2018 based on the Regulation of the Minister of Finance of the Republic of Indonesia No. 12/PMK.010/2015 with an import duty of 26% in the first year, 22% in the second year, and 18% in the third year. After the 3-year period ends, the security measures will be extended from 2018 to 2021 based on the Regulation of the Minister of Finance of the Republic of Indonesia No. 2/PMK.010/2018 with an import duty of 17.75% in the first year, 17.50% in the second year, and 17.25% in the third year. The amount of the import duty is calculated based on the Harmonized System (HS) code, namely HS 7228.70.10 and HS 7228.70.90.

Although security measures have been taken for a total of 6 years, it turns out that domestic producers, on behalf of PT. Gunung Raja Paksi, requested an extension of the security measures again for 3 to 4 years because they are still experiencing losses and have not been able to recover the losses suffered from May 2017 to April 2020.

Therefore, it is necessary to analyze the loss information submitted by PT. Gunung Raja Paksi Tbk has complied with Article 4 of the Agreement on Safeguards. In addition, in connection with the application for extension of security measures submitted by PT. Gunung Raja Paksi Tbk for 3 to 4 years; this still needs further analysis in accordance with Article 7 of the Agreement on Safeguards, which states that the maximum limit of safeguards is eight years, and Article 9 of the Agreement on Safeguards concerning exceptions to developing countries.

From the description above, the problems that can be arranged include:

1. What are the serious losses suffered by PT. Gunung Raja Paksi Tbk on products I and H section of other alloy steels in accordance with Article XIX GATT 1994 and Article 4 Agreement on Safeguards?

2. Can the extension of safety measures for I and H section products from other alloy steels still be carried out for the next 3 to 4 years according to Article 7 and Article 9 of the Agreement on Safeguards?

2 Research Methods

The approach used is normative juridical, namely researching and studying library materials or secondary data [9]. This research is an analytical descriptive study, which describes the results in the form of complete data such as evidence of a surge in imports, serious losses experienced, and detailed structural adjustments. Furthermore, the data will be analyzed using international conventions such as the GATT 1994 and the Agreement on Safeguards. The type of data used in this research is secondary data. Secondary data is sourced from primary, secondary, and tertiary legal materials from international conventions, books, research results, and scientific journals. This data is then used as supporting data in the analysis. The data collection method in this study was carried out using literature research techniques, namely looking for materials and secondary information needed and related to research. The analytical method of this research is qualitative data analysis. The data will be analyzed based on the secondary data obtained [10, 11].

3 Results and Discussion

3.1 Serious Losses Suffered by PT. Gunung Raja Paksi Tbk On Products I And H Section of Other Alloy Steel According to Article XIX GATT 1994 And Article 4 Agreement on Safeguards

Product Specifications and Proof of Serious Losses

The product specifications for I and H sections of other alloy steels for which an application for the extension of the security measure is applied are as follows:

- a. I section with a height or width of 100 mm (one hundred millimeters) up to 600 mm (six hundred millimeters) and H section with a height of 100 mm (one hundred millimeters) up to 350 mm (three hundred and fifty millimeters), from other alloy steels, which not further worked than hot-rolled, hot drawn or extruded, which fall under the heading HS Ex. 7228.70.10; and
- b. I section with a height or width of 100 mm (one hundred millimeters) up to 600 mm (six hundred millimeters) and H section with a height of 100 mm (one hundred millimeters) up to 350 mm (three hundred and fifty millimeters), of other alloy steel, rolled hot drawn, hot drawn or further worked extruded, which fall under the heading HS Ex. 7228.70.90 [12].

In the application for extension of safety measures for products I and H section of other alloy steel, the Petitioner, on behalf of PT. Gunung Raja Paksi Tbk has provided data to prove the serious losses suffered based on the applicant's performance indicators and market share in the following table:

Table 1. Amount of Absolute and Relative Imports of Goods Investigated.

Description	Unit	Volume		
		Period I (2018)	Period II (2019)	Period III (2020)
Import Volume	Ton	18.934	32.499	23.242
Change	%		71,65	(28,48)
Trend	%	10,79		
National Production	Index	100	81	76
Relative Import	Index	100	213	161
Trend	%	36,75		

Source: Central Bureau of Statistics (BPS), processed

The data above shows that the volume of imports in period I to Period II increased in absolute terms, and period I to Period III experienced a relative increase with a trend from Period I to Period III of 10%. National Production decreased from Period 1 to Period III.

Table 2. Applicant Performance Indicators.

No.	Description	Unit	Period			Trend %
			Period I (2018)	Period II (2019)	Period III (2020)	
1	Production Volume	Index	100	87	63	(20,74)
2	Domestic Sales Volume	Index	100	81	77	(12,49)
3	Operating Profit/Loss	Index	100	(9)	(77)	(92,58)
4	Productivity	Index	100	116	84	(8,40)
5	Installed capacity	Index	100	100	100	
6	Used Capacity	Index	100	87	63	(20,74)
7	Direct Labor	Index	100	75	75	(13,47)
8	Ending Inventory Volume	Index	100	125	37	(39,29)

Source: Applicant

Referring to Article 4 paragraph (2) of the Agreement on Safeguards regarding the indicators mentioned above in the form of changes in the number of sales, production, productivity, capacity utilization, profit and loss, and labor. So, from the data above it can be seen that:

- a. Production Volume decreased from period I to period III by -20,74%
- b. Domestic Sales Volume also decreased in the period I to Period III by -12.49%.
- c. Productivity from Period I to Period II increased but finally decreased to -8.40% in Period III. This increase in productivity was caused by a decrease in the number of direct employees in the reporting period due to several employees retiring and resigning, thus affecting the ratio of production to labor.
- d. Operational Profit/Loss decreased drastically in Period I to Period III with a figure of -92.59%. This was due to a decrease in domestic sales volume and an increase in import volume and the decision to lower selling prices to compete with imported products.
- e. Used capacity also experienced an absolute decline in Period I to Period III with a figure of -20,74%.

- f. Direct labor experienced a decrease in Period I to Period II and did not change in Period III, so that -13.47% was due to retirement and employee resignations, as well as policies taken by the directors of PT. Gunung Raja Paksi Tbk by considering the production and sales volume, which tends to decrease due to the decrease in the company's production and sales volume.

Due to the surge in imports shown in Table 1, of course, this directly impacts the applicant's performance indicators described in Table 2. It is clear that the increase in imports in Period I to Period II in Table 1 directly made production volume, domestic sales, productivity, and operating profit/loss decrease. Furthermore, due to the decline in these three indicators, the workforce and installed capacity decreased, which was explained by layoffs and resignations due to decreased production volumes. Although the import surge rate decreased in Period III in Table 1, this figure was still high when compared to the period I, resulting in a more severe decline in production volume, domestic sales, productivity, employment, and operating profit/loss in Period III in Table 2.

Table 3. Domestic Market Conditions for Products I and H section.

No.	Description	Unit	Period			Trend
			Period I (2018)	Period II (2019)	Period III (2020)	
1	Applicant's Domestic Sales	Index	100	81	77	(12,49)
2	Non-Applicant Domestic Sales	Index	100	47	68	(17,71)
3	Import Volume	Ton	18.934	32.499	23.242	10.79
4	National Consumption	Index	100	84	78	(11,58)
5	Applicant's Market Share	Index	100	97	98	(1,02)
6	Non-Imported Market Share	Index	100	56	87	(6,94)
7	Applicant's Market Share	Index	100	170	158	25,31

Source: Applicant & non-applicant, Applicant, BPS, processed

Referring to Article 4 paragraph (2) letter a of the Agreement on Safeguards in the form of the domestic market share being taken over by the imported product and changes in the number of sales, it can be seen from the above that:

- Domestic Sales of Applicants and Non-Applicants experienced a significant decrease in period I to Period II, although in Period III of Period III Domestic Sales of Non-Applicants had increased, the Domestic Sales of Applicants continued to decline.
- Import Volume experienced a drastic increase in period I to Period II and began to decline slightly in Period III.
- National consumption decreased in periods I to III with a trend of -11.58% due to soaring imports.
- Import Market Share experienced a drastic increase in Period I to Period II and tended to decrease in Period III with a trend of 25.31%.
- The market share of Applicants and Non-Applicants decreased in Period I to Period II, especially for Non-Applicants; in Period III, the market share of Applicants and

Non-Applicants again increased but still not significant because the value of the import share was still quite large.

Table 3 above shows an increase in the Import Market Share in Period I to Period II and slightly eased in Period III, but the amount is still large enough to cause a decline in domestic sales from both Applicants and Non-Applicants in Periods I to III. National consumption also continued to decline from Period I to Period III. Table 3 also explains that the volume of imports experienced an absolute and relative increase in Periods I to III; this caused the Market Shares of Applicants and Non-Applicants to decline in Period II and slightly improve in Period III but not significant because Import Market Share took over the market share.

Serious Loss

Article 4 paragraph (1) letter a of the Agreement on Safeguards states that “serious injury” shall be understood to mean a significant overall impairment in the position of a domestic industry. The indicators are described in Article 4 paragraph (2) letter an of the Agreement on Safeguards in the form of an increase in the number of imported products, both absolute and relative, the domestic market share taken over by the imported product, changes in the number of sales, production, productivity, capacity utilization, profits, losses, and labor [13].

Seeing from the data that has been analyzed previously, it can be concluded that the serious losses experienced by PT. Gunung Raja Paksi Tbk has complied with the indicators in Article 4 paragraph (2) letter a of the Agreement on Safeguards, namely the total increase in imported products, both absolute and relative, the domestic market share taken over by the imported product, changes in the number of sales, production, productivity, capacity utilization, profit, loss, and labor.

Referring to the extension of security measures that KPPI has investigated, for example, applications for extensions to Cotton Yarn Other than Sewing Thread, Aluminum-Zinc Coated Steel (BjLAS), and Ceramic Tiles, on average, indicators such as an increase in the number of imports both absolute and relative, an increasing share of imports, changes in the number of sales, production, productivity, profits and losses, and a decrease in labor so that it can be said as a serious loss or threat of serious loss in accordance with Article 4 of the Agreement on Safeguards so that it is necessary to extend security measures to restore industrial conditions in that country.

Unforeseen Development

The term unforeseen development appears in Article XIX of the GATT 1994, an escape clause that allows WTO member countries to avoid the obligations of the GATT 1994 provisions under certain terms or conditions.

In practice, the term unforeseen development, which is one of the important elements for the implementation of safeguards, turns out to be quite difficult to implement by various WTO member countries because each safeguard case is different, while the term unforeseen development does not yet have a clear benchmark [14]. Sample case:

- a. US – Hatter Fur Case in 1950 America vs. Czechoslovakia who judged clothing trends were not unforeseen development but predictable or predictable [15].
- b. Argentina – Footwear, WTO Panel decided to prove unforeseen development was by pointing to a surge in imports due to unexpected developments [16].

- c. Korea – Dairy Products, unforeseen development must be proven by a logical connection between the surge in imports and serious losses suffered [17].
- d. United States – Wheat Gluten, citing judicial, and economic interests, the panel argues that it does not attach importance to the unforeseen development clause [18].

Causality Relationship

The causal relationship, in this case, is evidence that the surge in imports that has occurred is the cause of losses or poses a threat of loss to the domestic industry of a country, so safeguards are needed.

Example: Appellate Body Report on the US – Wheat Gluten, interpreting a causal relationship can be proven by proving the surge in imports that causes losses to the domestic industry and the existence of other factors that are not included in the surge in imports which if not handled can cause losses to the domestic industry.

The existence of a causal relationship between the surge in imports and serious losses experienced has been explained in the data in the form of tables, and after analysis, it proves that the serious losses suffered by PT. Gunung Raja Paksi Tbk complies with Article 4 of the Agreement on Safeguards and Article XIX of the GATT 1994; although it does not explain in detail the elements of unforeseen development, unforeseen development here is understood as an unexpected surge in imports resulting in serious losses.

Referring to the security measures on fructose syrup in 2019 also does not explain the element of unforeseen development. Still, the Petitioner can prove a causal relationship between the surge in imports and the serious losses suffered by the Petitioner, resulting in the imposition of Safeguard Measures Import Duty on fructose syrup.

3.2 Extension of Safeguards on Products I and H Section of Other Alloy Steels According to Article 7 and Article 9 Agreement on Safeguards

Evidence of Industry Making Adjustments

In the initial evidence of the application for the extension of the security measure, PT. Gunung Raja Paksi Tbk explained that since the issuance of Security Measures Import Duty based on PMK No. 2/PMK.010/2018 Concerning the Imposition of Safeguard Measures Import Duty on the Import of Products I and H Section of Other Alloy Steel, the Applicant has made several structural adjustments consistently in the plan the program contained in the final report on the results of the investigation into the extension of the imposition of security measures on imports of products I and H section of other alloy steels as described in the following table [12]:

Table 4. Realization of Implementation of Structural Adjustments.

No.	Action plan	Action Stage	Status	
			Realized	Unrealized
1	Increased capacity, quality & reduced product costs	a. New Light Section Mill	65%	35%
		b. Revamping	30%	70%
		c. Increase the capacity of the descaler pump in the roughing mill process to	100%	

		improve product quality by cleaning the surface of the I & H section of the product so as to avoid surface defects		
		d. Trimming electrical energy distribution lines, to minimize the risk of power supply problems, and adding electrical power from 115 MG to 215 MG	30%	70%
		e. Make sales from the inventory side	100%	
		f. Opened a new marketing office	100%	
		g. Sales with discount	100%	
		h. Installation of new machine Beam Blank Caster	100%	
2	Sales Increase	a. Franco (continued) provides sales services by sending steel products I & H section directly to the hands of the buyer or the location designated by the buyer	100%	-
		b. Cut-to-length service (continued) provides services to buyers according to product size orders	100%	-
		c. Addition of marketing area (North Sulawesi, South Sulawesi, East Kalimantan, Bali)	100%	-
		d. Re-certification of SNI	100%	-
		e. Increase promotion by taking an active role in national/international exhibitions and increasing the frequency of promotions through print media	100%	-
		f. E-Commerce, utilizing online media as a more practical means of transactions and promotions to increase sales	100%	-
3	Improving the	a. Conduct training based on general	100%	-

Quality & Quantity of Human Resources by conducting labor training to minimize errors in every production activity to produce good quality products while simultaneously reducing production costs	competence		
	b. Conduct training based on expertise in handling production machines, namely training for Beam Blank Caster machine operators, New Light Section Mill machines, and Revamping machines	33%	67%

Source: Applicant

Table 4 above describes the adjustments that have been and are being made by PT. Gunung Raja Paksi Tbk in order to recover the serious losses suffered. In the table, it can be seen that PT. Gunung Raja Paksi Tbk has tried to make improvements in capacity, quality, and reducing product costs, some of which have been successfully realized and 3 stages are being realized to recover serious losses and compete with imported products. All aspects of increasing sales have been realized, such as adding marketing areas, increasing promotions, and using e-commerce tools to recover serious losses. The last one is to improve the quality and quantity of human resources with manpower training, for general training has been successfully realized, but in terms of special training, only 33% have been realized, and 67% have not been realized.

Looking at the data above, it has become evident that the domestic industry is making adjustments, and several stages have been realized during the imposition of Safeguard Measures Import Duty on products I and H section of other alloy steel imports, which soared in Indonesia. However, even though a number of these adjustments have been made, the fact is that the imported products I and H section still have an impact on the non-optimal implementation of the structural adjustment program, thus hampering the recovery of the serious losses of the Petitioners.

Duration of Safeguards According to Article 7 Agreement on Safeguards

In Article 7 paragraph (1) of the Agreement on Safeguards which explains that WTO member countries may apply safeguards to prevent or recover from serious losses experienced by a country's domestic products with a duration of not more than 4 years.

Article 7 paragraph (2) of the Agreement on Safeguards allows for the extension of security measures to prevent or recover from serious losses suffered by domestic producers.

Article 7 paragraph (3) of the Agreement on Safeguards explains that the total imposition of security measures, including extensions and others, should not be more than eight years.

Exceptions to Developing Countries in Article 9 of the Agreement on Safeguards

In Article 9 of the Agreement on Safeguards, there is a regulation regarding exceptions to developing countries which in Article 9 paragraph (2) states that, "A developing country Member shall have the right to extend the period of application of a safeguard measure for a

period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7.” which means that developing countries may extend the security measures or safeguards for the next two years beyond the maximum limit for the imposition of safeguards described in Article 7 paragraph (3).

In 2021, Indonesia is still included in the category of developing countries with a recorded population of 273.5 million people 2020, the gross national income of USD 3,870, the Human Development Index figure of 0.718, and a Human Asset Index of 83.3 [19]. Looking at the data, Indonesia still meets the requirements as a developing country in Article 9 of the Agreement on Safeguards.

Extended Safeguards on Products I And H Section of Other Alloy Steel

In deciding this matter, the most important thing is to understand the meaning of Article 9 paragraph (2), which reads, “A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7.”

The word "beyond" in the sentence above is defined as "outside," which means outside the maximum limit described in Article 7 paragraph (3), which is eight years, so the meaning of this article is to allow the extension of security measures without the need to spend a total of 8 years. is in Article 7 paragraph (3) and can immediately extend the security measure up to a maximum limit of 10 years.

It can be concluded that the product I and H section of other alloyed steels may be subject to an extension of the security measures in accordance with the request of the Petitioner, namely 3 to 4 years in the future according to the provisions of Articles 7 and 9 of the Agreement on Safeguards.

4 Conclusion

Based on the data that has been analyzed above, it can be concluded that the serious losses experienced by PT. Gunung Raja Paksi Tbk has complied with the indicators in Article 4 paragraph (2) letter a of the Agreement on Safeguards, namely the total increase in imported products, both absolute and relative, the domestic market share taken over by the imported product, changes in the number of sales, production, productivity, capacity utilization, profit and loss, and labor. The extension of the product I and H section of other alloy steels does not explain that there is unforeseen development, but from the existing data, it is sufficient to explain that there is a surge in imports causing losses to the domestic industry. The existence of a causal relationship between the surge in imports and serious losses experienced has been explained in the data in the form of tables, and after analysis, it proves that the serious losses suffered by PT. Gunung Raja Paksi Tbk complies with Article 4 of the Agreement on Safeguards and Article XIX of the GATT 1994, although it does not explain in detail the elements of unforeseen development, unforeseen development here is understood as an unexpected surge in imports resulting in serious losses.

In the case of an application for extension of product I and H section of other alloy steel, in accordance with the legal rules, namely Article 7 and Article 9 of the Agreement on Safeguards, namely regarding the duration of security measures, extension of security measures, evidence of industry making adjustments and exceptions to developing countries, and according to the data that has been provided by the Petitioner, the application submitted

by the Petitioner has met the requirements for the extension of the security measure. In addition, in understanding the word "beyond" in the sentence in Article 9 paragraph (2) it is defined as "outside" which means outside the maximum limit described in Article 7 paragraph (3) which is 8 years, so the meaning of this article is to allow there is an extension of the security measure without the need to spend a total duration of 8 years as referred to in Article 7 paragraph (3) and can immediately extend the security measure up to a maximum limit of 10 years. Therefore, the product I and H section of other alloy steels may be subject to an extension of the security measures by the request of the Petitioner, namely 3 to 4 years in the future, according to the provisions of Articles 7 and 9 of the Agreement on Safeguards.

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