

# Draft of Government Regulation Summary on Safeguard, Antidumping and Countervailing Measures

In an effort to improve Indonesia's trade defense regime and ensure its continued alignment with recent legislative developments and international obligations, the government is currently completing work on the new Draft Regulation of the Government ("**Draft Regulation**") on Safeguard, Antidumping and Countervailing Measures (collectively referred to as "**Trade Remedy Measures**"). If it is ultimately enforced, then this new Draft Regulation will repeal and replace the existing framework of Regulation of the Government No. 34 of 2011, which bears the same title as the Draft Regulation ("**Regulation 34/2011**").

Broadly speaking, the Draft Regulation represents a comprehensive upgrading of Indonesia's Trade Remedy Measures framework. In this regard, the new framework expands the scope of safeguard measures, including the introduction of industrial and bilateral safeguards that can be implemented in line with international agreements. The Draft Regulation also formalizes a new shipper review mechanism for antidumping and countervailing measures, and will introduce additional rules on the duration and extension of Trade Remedy Measures.

This edition features a concise analysis of the various matters that are addressed under the framework of the Draft Regulation. However, due to the broad nature of the provisions set out therein, our discussion has been limited to the following specific topics:

1. Revised General Provisions on Safeguard Measures;
2. New Shipper Reviews Mechanism; and
3. Revised Timelines for Trade Remedy Measures.

## ***Revised General Provisions on Safeguard Measures***

Under Regulation 34/2011, safeguard measures are primarily treated as trade remedies that can be implemented in response to import surges that cause serious damage to domestic industries. While maintaining this approach, the Draft Regulation is set to expand the scope of safeguard measures by dividing them into the following two specific categories:

1. Trade safeguard measures, which can be imposed in response to surges in imports that cause serious damage or threaten to cause serious damage to domestic industry; and

2. Industrial safeguard measures, which are linked to global competition caused by import surges and their impact on domestic industry under industrial law.

It should be noted that the category outlined in point (2) above does not currently exist under Regulation 34/2011. In addition, the Draft Regulation will now allow the government to impose bilateral or regional safeguard measures in accordance with ratified international trade agreements. This ultimately means clearer legal support for safeguard actions that are implemented through free-trade agreements.

The Draft Regulation is also set to newly introduce the various conditions that must be proven before safeguard measures can be imposed, which include:

1. A significant increase in imports, whether absolute or relative, is caused by unforeseen developments;
2. Serious damage or a threat of serious damage being sustained by domestic industry; and
3. A causal link between the import surge and the damage suffered.

In terms of the available forms of safeguard measures, both Regulation 34/2011 and the Draft Regulation set two principal instruments, i.e. the imposition of safeguard duties and safeguard quotas. However, the Draft Regulation is now set to introduce a new provision that will govern the application of safeguard duties in relation to specific import scenarios, including:

1. Goods entering or exiting special economic zones;
2. Passenger baggage, postal consignments and courier shipments that are subject to special tariff treatments; and
3. Goods that receive import duty exemptions, reductions or suspensions.

Ultimately, under both regimes, safeguard measures may only be imposed following preliminary investigations (*penyelidikan*) that should be conducted by competent investigating authorities. However, it should be noted that an important procedural revision is set to be introduced under the Draft Regulation. Specifically, within a maximum of 30 days from taking receipt of a completed application, the relevant investigating authority must assess the sufficiency of the initial evidence and determine whether or not to initiate an investigation. By contrast, under Regulation 34/2011, a corresponding preliminary investigation period of only 20 business days from the relevant investigating authority taking receipt of an application applies.

### ***New Shipper Reviews Mechanism***

The Draft Regulation newly introduces a new shipper reviews mechanism that will apply in relation to both antidumping and countervailing cases. In this regard, any exporters or producers who were not involved in any original investigations may apply for new shipper reviews in order to secure their own individual dumping margins or individual subsidy rates.

This type of application should be submitted in writing after the imposition of the relevant antidumping or countervailing duty at least 15 months prior to its expiration. In order to qualify, exporters or producers must meet the following criteria:

1. Must not export the investigated goods during the original investigation period;
2. Must not be affiliated with any exporters or producers who are already subject to antidumping or countervailing duties; and
3. Must commence exporting only after the relevant antidumping or countervailing duty has been imposed.

If a preliminary investigation confirms that these requirements have been satisfied, then the relevant investigating authority will recommend that the Minister of Trade impose an individual antidumping or individual subsidy rate duty based on the results of the review. Conversely, if they are not able to meet the above-outlined criteria, then exporters or producers will be subject to the generally applicable duty rate in accordance with Regulations of the Minister of Finance.

### ***Revised Timelines for Trade Remedy Measures***

The Draft Regulation is also set to introduce more detailed and structured provisions on the duration of Trade Remedy Measures in comparison with Regulation 34/2011. While the overall maximum time limits are generally set to be maintained, the Draft Regulation now clarifies minimum periods and sets clearer rules on extensions, as summarized in the table below:

<b>Category of Trade Remedy Measure</b>	<b>Regulation 34/2011</b>	<b>Draft Regulation</b>
Antidumping duties	May be imposed for a maximum period of five years	Maintains the same maximum period but now requires a minimum duration of three years
Countervailing duties		
Safeguard measures	May be imposed for a maximum period of four years	Sets an initial imposition period of up to four years, which can be extended for up to an additional four years. Further extensions will also be permitted, provided that their total duration does not exceed 10 years.

### ***Key Takeaways***

Overall, the Draft Regulation is set to strengthen legal certainties and enforcement structures. This means that stakeholders should anticipate a more systematized and potentially more assertive trade remedy regime and should therefore prepare their internal data, documentation and monitoring systems accordingly. Furthermore, both domestic industries and exporters should proactively review their compliance strategies, import exposures and investigation readiness, as the Draft Regulation introduces broader safeguard concepts, clearer evidence thresholds, a formal new shipper review mechanism and more structured timelines for the imposition and extension of measures.