ACKNOWLEDGEMENT

Timor-Leste is currently navigating the path towards accession to key international trade agreements, namely the Association of Southeast Asian Nations (ASEAN), the Economic Partnership Agreement (EPA) with the Pacific States, and the World Trade Organization (WTO). As Timor-Leste embraces these affiliations, it becomes imperative to comprehend the integral role of trade liberalization and the commitments it necessitates, including tariff reduction and the reformulation of trade restrictions.

Within the frameworks of the WTO and ASEAN agreements, Timor-Leste possesses the flexibility to deploy trade remedy measures—safeguard (SG) measures, anti-dumping (AD) duties, and countervailing (anti-subsidy) duties (CVD). These measures afford a temporary reprieve, enabling the suspension or reversal of tariff reductions when circumstances demand such intervention.

The primary objective of trade remedies is the provisional safeguarding of domestic industries. By temporarily increasing import duties or implementing quantitative restrictions like quotas, governments shield local industries from the competitive challenges posed by imports. Such measures are invoked in response to a surge in import quantities, overwhelming domestic industries (safeguards), or instances of unfair pricing practices (anti-dumping duties) and government subsidies (countervailing duties) benefiting exporters.

The application of trade remedies is contingent upon the ability of the domestic industry to regain competitiveness or the cessation of unfair pricing and subsidies. These mechanisms, crucially, allow governments to address political pressures arising from heightened competition due to trade liberalization. The absence of relief mechanisms could jeopardize the entire process of trade liberalization.

The adoption of a trade remedy regime stands to benefit Timor-Leste significantly. Domestic industries would be more inclined to support trade liberalization if shielded against unfair competition, fostering a conducive environment for economic growth. Similarly, potential investors would be more attracted, knowing that trade remedies could be deployed to safeguard their investments. Notably, most ASEAN members, including those less economically developed, have embraced trade remedy regimes to navigate the complexities of global trade.

This document serves as a dynamic guide for the Timor-Leste government as it navigates the path toward adopting and implementing a comprehensive trade remedy regime. Offering a thorough overview of the intricacies surrounding trade remedies, it illuminates their importance, underscores the necessity for effective regulation, emphasizes the vital aspect of preparedness in terms of institution strengthening and human resource capacity, and explores the implications and significance of domestically implementing a robust trade remedies regime.

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I. PROPOSED TRADE REMEDY REGIME FOR TIMOR-LESTE

Timor-Leste is in the process to accede to the Association of Southeast Asian Nations ("***ASEAN***") and the World Trade Organization ("***WTO***"). By joining these organizations and their related agreements Timor-Leste will commit to not impose import duties above the agreed bound tariff levels.

These agreements however contain build in safety valves in the form of trade remedy measures. These measures allow governments to increase tariffs above their bound tariff levels following specific procedures if certain conditions are met. There are three types of trade remedy measures: anti-dumping measures, countervailing measures and safeguard measures.

The rules with regard to these instruments are incorporated in Articles VI and XIV of the WTO General Agreement on Tariffs and Trade, the WTO Agreement on Safeguard, the WTO Agreement on Implementation of Article VI of General Agreement on Tariffs and Trade 1994 ("***AD Agreement***") the WTO Agreement on Subsidies and Countervailing Measures ("***SCM Agreement***") as well as Articles 86 and 87 of the ASEAN Trade in Goods Agreement ("***TIGA***") which indicates that the relevant WTO Agreements are fully applicable between ASEAN Members so that ASEAN Members are allowed to impose trade remedy measures on imports from other Members.

1. Introduction to Trade Remedies

Although they might undermine the tariff commitments made during trade negotiations, trade remedies are perceived by governments as a political necessity for governments to agree to tariff commitments by providing them with relief mechanisms should such tariff commitments injure their industries. The fundamental purpose of trade remedies is thus to provide temporary protection against imports which injure their domestic industries in certain conditions.

The main trade remedy tools - anti-dumping and countervailing measures - are aimed at addressing unfair trade practices, namely dumping (i.e. the selling by a company at a lower price in its export market than in its domestic market) and subsidisation (i.e. the receipt by a company of government support), which causes injury to the domestic industry of the importing country. Safeguard measures, on the other hand, targets fair trade by providing relief in case of an unexpected surge in imports which causes injury to the domestic industry of the importing country.

The protection trade remedies offer most often takes the form of increased import duties but can also in some cases be in the form of quantitative import restrictions such as quotas. They can only stay in place for as long as the domestic industry of the importing country is at risk of injury or as long as the unfair trade practices continue.

In order to impose trade remedies, the importing country must follow the procedures set out in the relevant WTO Agreements as well as any additional rules which might be included in other applicable trade agreements. As such, while trade remedies are a useful tool to protect domestic industries struggling in the face of increasing imports following the process of trade liberalization, they come at an administrative cost and require technical know-how.

1.1. Anti-Dumping Measures

Anti-dumping measures are the **most commonly used** type of trade defence measures. Anti-dumping measures can be imposed on **imports from a particular country** when it is found that exporting producers in that country are (i) dumping (i.e., selling below what is called "normal value") and that (ii) the dumped imports cause or threaten to cause material injury to the domestic industry producing the like product. These measures take the form of an individual import duty per exporting producer in the targeted country and can be imposed following an investigation by the relevant authorities. We delve into these elements in more detail below.

In terms of substance, **dumping** occurs where an exporting producer sells the goods concerned at a lower price in its export market (the export price) than the price of the goods in its domestic market (known as the normal value). The extent of this price discrimination is called the dumping margin. In certain cases, when investigating authorities consider that the exporting country is not functioning in accordance with market economy principles (which is commonly the case in investigations targeting China for example), WTO rules allow the authorities to depart from basing the normal value on a producer's actual prices and to use alternative methodologies instead. Typically, these alternative methodologies use surrogate data from a third country as domestic prices. This usually results in a much higher normal value and, hence, a much higher dumping margin.

To determine whether dumped imports have caused a **material injury** to the relevant domestic industry, authorities must assess the volume of these imports and their effects on price, as well as other factors reflecting the situation of the domestic industry such as market share or profitability. Authorities must then show that the injury was caused by the dumped imports and was not caused by other factors.

Finally, although this is not mandatory under WTO rules, some countries require their authorities to assess whether the imposition of trade defence measures is in the overall interest of their economies by balancing the interests of producers, importers and users of the product concerned.

Anti-dumping investigations thus **require gathering and analysing a substantial amount of information** from targeted exporting producers (in order to establish dumping) as well as from domestic industries (in order to establish material injury). The data gathering exercise requires a fair amount of preparation for each investigation and the subsequent analysis of this data is a somehow technical process. Officials conducting anti-dumping investigations must be trained to perform the relevant calculations and analysis. In most jurisdictions, a team of at least 5 officials working full time is necessary to conduct an anti-dumping investigation. These officials are usually dedicated only to conducting anti-dumping investigations and do not perform other functions.

In terms of procedure, the AD Agreement sets forth a range of procedural rules. For instance, authorities may normally only initiate anti-dumping investigations based on a complaint from their domestic industries which provide sufficient *prima facie* evidence that the conditions for the imposition of anti-dumping measures are present. This complaint must also be supported by a certain share of the domestic industry. Investigations, once initiated, should be concluded within eighteen months. There are also several transparency rules which must be respected, for example by giving access to interested parties to documents related to the investigation. It is also necessary to ensure that rights of defence are respected by providing interested parties with hearings and opportunities to comment on the conduct of the investigation. Detailed reports must be published with regard to the findings of the investigation. The investigation must be concluded within 18 months. Once imposed, anti-dumping measures must also be challengeable before domestic courts.

Anti-dumping investigations are thus **heavily proceduralised** and require some well-established framework to operate in accordance with international rules.

If it is established during the procedure that the substantive conditions are met, the country conducting the investigation can impose an individual import duty per exporting producer at an amount that cannot be higher than each exporting producer's dumping margin. Investigating authorities thus establish individual duties per exporting producer which cooperated in the investigation as well as a rate for "all other companies" which did not manifest themselves during the investigation. This rate is usually equal to, or higher than, the highest duty established for cooperating exporting producers.

Anti-dumping measures can be set at **a quite high level**, in particular when the exporting country is not considered as a market economy, and there is room for the importing country to increase the level of the duties by having recourse to legal engineering to increase the dumping margin and, hence, the level of the duties.

In the course of the investigation, the importing country can impose provisional measures for a duration varying from 6 to 9 months provided it establishes that the substantive conditions are met. Anti-dumping measures last for 5 years but can be renewed if it is established that the dumping and/or injury is still present or would recur if the measures were removed. There is no maximum number of times that anti-dumping measures can be renewed.

As such, anti-dumping measures can provide **nearly infinite** protection in terms of duration as there is no maximum to the number of time that they can be renewed.

The ASEAN Trade in Goods Agreement ("***TIGA***") expressly allows ASEAN Member States to impose anti-dumping measures by reference to WTO Anti-Dumping Agreement. Similarly, Free Trade Agreements signed by ASEAN generally also incorporate the right to impose anti-dumping measures on imports from trading partners.

1.2. Countervailing Measures

Countervailing measures are the **least commonly used** type of trade defence measure. They can be imposed on imports from a particular country following an investigation, once it can be established that imports are being (i) subsidised and (ii) cause material injury or a threat thereof to the domestic industry producing the like product. The assessment of these criteria can be conducted on a country-wide basis but is usually done per exporting producer. It can result in a country-wide duty or an individual duty per exporting producer, depending on how the analysis is conducted. The assessment of material is the same as for anti-dumping measures and the procedure to impose countervailing measures and the form of such measures are also generally similar to that regarding anti-dumping measures. As such, in this section, we further delve on the element which differ between countervailing measures and anti-dumping measures.

In terms of substance, subsidisation is defined by the WTO SCM Agreement as a financial contribution from a government or public body which confers a benefit on its recipient (meaning that the contribution is more favourable than what would be obtained in the market). A financial contribution can take several forms such as the provision of goods at less than adequate remuneration, a tax break or a direct transfer of funds. A financial contribution granted by a private body can also be considered a subsidy if the government has "entrusted" or "directed" that private body to provide a financial contribution. To be made subject to countervailing measures, a subsidy must also be found to be specific meaning that it is not generally available throughout the economy.

The sum of the benefits received by an exporting producer (that is, the difference between the financial contributions that the exporting producers could have received on the market and those it received) divided by that entity's turnover is called the subsidy margin. As with anti-dumping measures, countervailing duties cannot exceed an exporting producer's subsidy margin.

As such, countervailing measures **require gathering and analysing a very substantial amount of information** from targeted exporting producers (to establish subsidisation), the government of the exporting country (to establish subsidisation) as well as from domestic industries (in order to establish material injury). The data gathering exercise requires a great amount of preparation for each investigation and the subsequent analysis of this data is a very technical process, even more so than anti-dumping due to the variety of calculations which must be performed to assess the benefits provided by various subsidies. Officials conducting countervailing investigations must be trained to perform the relevant calculations and analysis. In most jurisdictions, a team of at least 5 officials working full time is necessary to conduct a countervailing investigation. These officials are usually dedicated only to conducting countervailing investigations and do not perform other functions. However, due to the technicality of these investigations, only a few economically advanced jurisdictions do conduct countervailing investigations (mostly the United States of America, the European Union, Brazil, and India).

In terms of procedure, countervailing investigations are rather similar to anti-dumping investigations except that the government of the exporting country must also be involved in the investigation through consultations and that rights to be heard and of defence must be granted to it.

As a result, in addition to being **heavily proceduralised** like anti-dumping investigations, countervailing investigations are also often perceived are **more politically sensitive** due to the involvement of the government of the exporting country and the allegations that such government is subsidizing its industries.

If it is established during the procedure that the substantive conditions are met, the country conducting the investigation can impose a country wide import duty or an individual import duty per exporting producer at an amount that cannot be higher than the established subsidy margin for the country or per exporting producer depending on how the investigation is conducted. Like anti-dumping measures, the countervailing measures can be renewed every 5 years and provisional measures can be imposed during the investigation (although only for a duration of 4 months). However, due to the way the level of the duties is calculated, countervailing measures usually result in **rather low level of import duties**. As a result, the few jurisdictions using such measures often only impose these measures on top of already existing anti-dumping measures to provide extra protection to their domestic industries.

The ASEAN TIGA expressly allows ASEAN Member States to impose countervailing measures by reference to WTO SCM Agreement. Similarly, Free Trade Agreements signed by ASEAN generally also incorporate the right to impose countervailing measures on imports from trading partners.

1.3. Safeguard Measures

Safeguard measures are perceived as a different tool to anti-dumping and countervailing measures as they are not aimed at addressing unfair trade practices. While they are not the most commonly used trade defence measure overall, they are the **most used measure by less economically advanced countries**.

Safeguard measures must be imposed on **imports from all countries** (although imports from free trade agreement partners can be excluded from their scope but it is not mandatory to do so) if it is demonstrated through an investigation that (i) due to unforeseen developments, (ii) there is a surge in imports (iii) which causes or threatens to cause serious injury to the domestic industry producing the like product. I delve into these elements in more detail below.

In terms of substance, unforeseen developments are those which could not be expected to occur at the time the WTO Member imposing the safeguard measure joined the organisation while the surge in imports resulting from these developments must be recent, sudden, sharp, and significant.

The standard of injury to the domestic industry that must be demonstrated for safeguard measures is higher than in the case of anti-dumping and countervailing investigations as it must be shown that the industry is suffering "serious" injury rather than merely "material" injury. The analysis to be conducted is, however, rather like that under anti-dumping and countervailing measures. Authorities must then show that the injury was caused by the increased imports and was not caused by other factors.

As such, safeguard investigations are **rather less technical than anti-dumping and countervailing investigations**. Indeed, while they require the gathering and analysis of data from the domestic industry, they do not require authorities to look at the data of exporting producers. Although they additionally require the analysis of import data and general market developments, the gathering and analysis of such data is much less technical than the complex calculations to be performed in anti-dumping and countervailing investigations. As a result, safeguard investigations do not require as intense training of personnels and can often be conducted by officials in charge of other matters (such as competition authorities or staff in charge of import duty administration) instead of a dedicated full-time unit as is often necessary for anti-dumping and countervailing measures.

In terms of procedure, safeguard investigations can be initiated based on a complaint but also directly by the importing country without having to meet any representativity standard. They however also require that interested parties must be given a chance to present their views but there is much more flexibility given to the relevant authorities in doing so in terms of format and deadlines for examples. There is no maximum deadline for the investigation to be concluded. Furthermore, safeguard measures do not have to be challengeable before domestic courts.

As such, safeguard investigations are less heavily proceduralised making them **easier to conduct** in accordance with international trade rules.

If it is established during the procedure that the substantive conditions are met, the country conducting the investigation can impose safeguard measures on imports from all countries (although free trade agreement partners can be excluded under certain conditions). Safeguard measures can take different forms (tariffs, tariff quotas or quotas) and must be set at the level necessary to prevent or remedy serious injury. There is thus significant flexibility since, unlike for anti-dumping and countervailing measures, the level of the measure does not have to be set based on calculations (except for quotas which must be set at a level below the average of the last three years in terms of import volume).

Safeguard measures can be imposed for an initial period of 4 years which can be extended to a maximum of 8 years if certain conditions are met. If safeguard measures are in place for more than one year, their level should be liberalized (for example by reducing the level of the duties or increasing the quotas) at regular intervals. Provisional measures can also be imposed during the safeguard investigation for a total duration of 200 days. However, WTO members affected by the safeguard measures can impose rebalancing measures if the safeguard measures stay in place for longer than 3 years to compensate for the lost trade caused by the measures. As such, while safeguard measures provide for **more flexible protection** to domestic industries, this protection is **not long lasting** and might incur **retaliation** by trading partners.

The ASEAN TIGA expressly allows ASEAN Member States to impose safeguard measures by reference to WTO Agreement on Safeguards. Similarly, Free Trade Agreements signed by ASEAN generally also incorporate the right to impose safeguards measures on imports from trading partners. In addition, certain Free Trade Agreements signed by ASEAN also allow ASEAN Member States to impose so-called “bilateral” safeguard measures on imports from the Free Trade Agreement partner only following similar substantive conditions and procedures as those for safeguard measures under the WTO Agreement on Safeguards.

II. PROPOSED IMPLEMENTATION OF TRADE REMEDIES REGIME IN TIMOR-LESTE

Based on the above, it is recommended that Timor-Leste adopts a trade remedy framework to protect its industries in case of increased imports resulting from trade liberalization resulting in injury.

In order to do so, a first step will be to prepare the relevant legislative acts. The next step will take the form of capacity building by training government officials in conducting the relevant data gathering and analysis exercises. At the same time, awareness exercises should be conducted with the private sector to increase knowledge of these new tools and of how they can be used to serve their interests. We address these elements in turn.

About the development of the legislative act, these can take the form of three separate legislative acts or one act for anti-dumping and countervailing measures (due to the overlapping injury analysis and procedural elements) with a separate act for safeguard measures. Our advice would be to **draft the acts for the three types of measures at the same time** in order to ensure coherence between them in terms of substance (in particular with regard to the injury analysis which is the same for anti-dumping and countervailing measures and rater similar with regard to safeguard measures) or to **first draft the legislative act for safeguard measures** and to turn to anti-dumping and countervailing measures at a later stage. This is so because, as demonstrated in the table below, safeguard measures are a more suited tool for Timor-Leste at this stage of development:

Tool	Anti-dumping	Countervailing	Safeguards
Advantages	▪ High duty ▪ Potentially infinite duration ▪ Not too complex ▪ No retaliation ▪ Target specific country	▪ Potentially infinite duration ▪ No retaliation ▪ Target specific country	▪ Flexible remedy ▪ Simplest ▪ Less procedural ▪ Average workload ▪ Requires some training
Disadvantages	▪ Heavily procedural ▪ High workload ▪ Requires intense training	▪ Low duty ▪ Very complex ▪ Heavily procedural ▪ High workload ▪ Requires intense training	▪ Limited in time ▪ Potential retaliation ▪ Applies to all imports

As such, safeguard measures are the primary tool used by governments learning how to use trade defence measures as they are more flexible, easier to learn and to use. At the same time, their disadvantages are less problematic for less economically advanced countries as the risk of retaliation is low, that their limited duration is often sufficient for the domestic industries to adapt and that the injurious imports might not come from a single country but rather from all countries as a result of recent trade liberalization. Thus, we would recommend that Timor-Leste first focuses on developing a functioning framework for **safeguard measures** even if legal instrument(s) for all three types of trade defence measures might be drafted already at this stage.

Once the relevant law(s) have been drafted, it will be necessary to train government officials in the relevant ministry in their use. Trade remedies are usually handled by trade, investment, and industry ministries so that government officials in the Ministry of Tourism, Commerce, and Industry ("***MTCI***") might be the focus of this training. The relevant officials should have background in economics, finance, accounting and/or law. As indicated above, at this stage, it would be preferable to first focus on training MTCI officials on the use of **safeguard measures** as these are simpler to use and are a good introduction for government to the world of trade remedies, as explained above, before moving on to using more advanced anti-dumping and countervailing measures. This training typically takes the form of several workshops followed by the conduct of moot investigations under the supervision of trade defence practitioners. In a final step, trade defence practitioners would accompany the relevant officials in conducting their first real investigations. Once this is done, it could then be considered to conduct further training regarding anti-dumping investigations in the following years.

While this training takes place, awareness raising exercises should be conducted with relevant businesses and business associations in the country to increase knowledge of the availability of this new tool(s) to protect their domestic market when foreign competition injures them. Such awareness trainings should also involve basic explanations in how to draft complaints and contact the relevant officials to initiate new investigations. Such awareness training can be conducted by supporting organisations with knowledge of trade remedies but do not require the involvement of trade defence practitioners.

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