

Unclassified

English - Or. English

8 November 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Cancels & replaces the same document of 27 October 2023

Working Party No. 2 on Competition and Regulation

Competition and Professional Sports – Note by Indonesia

4 December 2023

This document reproduces a written contribution from Indonesia submitted for Item 4 of the 76th meeting of Working Party 2 on 4 December 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/competition-and-professional-sports.htm>.

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Indonesia

1. Self-Regulatory Organization in The Sports Sector

1. Football is one of the most popular sports in Indonesia; therefore, football is getting attention from the government. Apart from the Ministry of Youth and Sports, the government has also formed independent institutions to regulate the sports sector, namely the Indonesian National Sports Committee (KONI). KONI is an organization that facilitates and supervises the development of sports at the national level. They play a role in supporting athletes, coaches, and the development of sports, including football. The forerunner to KONI was formed by various sports organizations, one of which was the organization that manages football, namely the Indonesian Football Association (PSSI).

2. PSSI exists as an organization that aims to ensure that football in this country can develop in a healthy and orderly manner. As a self-regulatory organization, PSSI has several main roles that are very important in maintaining the integrity and quality of the sport of football in Indonesia. PSSI plays a role in formulating and enforcing rules and regulations that regulate all aspects of football, starting from technical to administrative aspects. PSSI regulates match rules, the number of players, the points system, dealing with disciplinary issues such as sanctions for rule violations, and many other technical aspects, including organizing football leagues and tournaments that take place within the country. In this case, PSSI acts as Indonesia's representative in international competitions, such as the FIFA World Cup and AFC Asian Cup. Administratively, they must ensure that these clubs carry out their operations in accordance with established standards. This includes overseeing the club's finances, managing the stadium infrastructure, and ensuring the club complies with rules relating to young players.

3. In addition to its technical and administrative role, PSSI also has major ethical responsibilities. They must ensure that Indonesian football is free from corruption, fraud, and other unethical behaviour. They must also promote the values of fair play, sportsmanship, and integrity in football. PSSI also collaborates with various related parties, such as the police, authorities, and sponsors, to ensure the security and smooth running of tournaments and leagues. They must coordinate various logistical and security aspects so that all parties involved in the competition feel safe and comfortable. Overall, the management of football tournaments and leagues in Indonesia is very dependent on the regulations and guidelines set by PSSI. PSSI is responsible for planning, supervising, and running the competition as well as possible to produce a quality football experience and support the development of football in Indonesia.

1.1. Tournaments and Leagues Management and its Commercial Rights

4. The management of tournaments and leagues in Indonesia is based on strict steps and procedures set by PSSI. In organizing the Indonesian football competition, PSSI appointed the league organizer, namely LIB (the Indonesian New League company). LIB was given the authority by PSSI to manage professional football competitions and tournaments in Indonesia. PSSI also provides authority to regulate broadcasting rights, exclusive areas, merchandise, and promotions to LIB as follows:

1. LIB is the sole holder of the League's commercial rights, including media rights, commercial partner rights, and data rights. For data rights, clubs are allowed to compile data related to their matches in the league, use data related to the league

for training purposes, and publish the data on the club's official media (website, social media, and other official club media). Clubs are prohibited from exploiting data outside of these aims and are not permitted to collaborate with competing sponsors of LIB unless permitted by LIB.

2. LIB has the right to carry out the centralization of the League's merchandising system, which includes production, distribution, and retail. The Club and LIB each receive a share of profits as regulated in the merchandising guidelines set by LIB.
3. The club is obliged to guarantee that it gives LIB the right to use photos, audio-visuals, logos, club names, etc. free of charge for non-commercial purposes, promotions, and other things created by LIB. Clubs are also required to provide all relevant data and/or information for LIB promotional purposes, including giving permission to the players to take part in promotional and/or social League activities.
4. LIB has the right to collaborate with television stations that will broadcast the League, both nationally and internationally, and clubs are not allowed to record, publish, or take video (live streaming) of matches without the approval of LIB.
5. PSSI is involved in the process of offering broadcasting rights, determining time periods and geographical areas, and sharing income with broadcasting rights holders. All commercial rights are held by PSSI and LIB, including broadcasting rights, promotions, merchandise, etc. This is due to the centralization of commercial management, uniformity and consistency, regulatory control, brand and copyright protection, and finance and sports development in Indonesia.

1.2. Income Mechanism for Football Clubs and Athletes Based on PSSI Regulations

6. The mechanism for sharing the income of football clubs and their athletes is an important part of the sports ecosystem. This income can come from various sources, and the mechanisms can vary depending on competition, negotiations, and applicable regulations. Revenue sharing for football clubs can come from broadcasting rights and ticket sales, which have been agreed upon with PSSI and LIB as organizers. This income can vary depending on how popular the club is, the level of audience attendance, and the broadcasting rights agreements that have been made. PSSI usually distributes its income to football clubs from sponsors, broadcasting rights holders, and others. Then, football club income also comes from bonuses and incentives. Clubs that have achieved certain achievements in competitions, such as being champions or being in a certain ranking, affect the club's income.

7. Meanwhile, the distribution of income to athletes comes from salaries and incentives, achievement bonuses, personal sponsors, and participation in national teams. Football athletes usually earn a salary as part of their contract with a club. This salary can vary depending on the athlete's skill level, experience, and accomplishments. Football club athletes can also get bonuses and personal sponsorship (not in the name of the club or league), which of course is in accordance with the agreement between the athlete, club, LIB, and PSSI.

2. Additional Issues in the Sports Sector: Apparel Business Management in Indonesia

8. Indonesia is a country that produces textiles from upstream to downstream, from yarn to finished clothing products. The existence of safeguards for thread and clothing products makes the apparel industry less competitive. The domestic fabric industry also cannot import cheap raw materials from abroad. This safeguard aims to protect domestic

industry; however, this treatment makes the price of apparel (including sports apparel) in Indonesia not affordable compared to abroad. This issue has become one of the ICC's recent concerns.

9. The issue related to apparel business management in relation to the intersection of competition policy and safeguard policy is provided in **Annex I of this contribution**.

3. Commercialization of Football and the Application of Competition Law in Indonesia

10. The market players in the football industry are clubs and sports organizations. They benefit from holding sports events. These sources of income include the sale of tickets at the stadium, in-the-stadium advertising, the sale of media rights, advertising on TV, shirt advertising, sponsoring, and merchandising (e.g., the sale of t-shirts). The more interesting the match, the more viewers will be interested.

11. In the football market, sales of broadcasting rights have become the main source of revenue for sports organizations and clubs. Joint selling and buying of TV rights exclusively is so important in broadcasting sports events. In the absence of exclusivity, a second (or even third) competing TV operator could broadcast the same sports event simultaneously on another channel. If the TV audience is split between two (or three) channels, the value of the product would decline for each TV operator. Apart from that, joint selling is also useful to prevent fierce competition between clubs in selling each club's broadcasting rights, which in the long term will disrupt the club's focus on developing the abilities of the players. Therefore, sports organizations are needed to manage the commercial activities of clubs. Sports organizations act as intermediaries or platforms that connect players in the sports sector with TV stations, advertisers, and other supporting businesses.

12. Rights to most popular football events where favourite clubs or national teams participate constitute the essential factor that leads consumers to watch or subscribe to a particular FTA TV channel, pay TV channel, or an over-the-top (OTT) media service (also known as a streaming platform). An interesting fact in the broadcasting industry in Indonesia is that FTA channels are developing more rapidly than pay TV channels. This also has an impact on the broadcasting of sports programs, where domestic sports programs cannot be developed exclusively by subscription on a pay TV channel. FTA television stations must compete for advertisers. This is different in other countries where pay TV channels have emerged that specifically broadcast sports programs.

13. Based on history, it appears that television ratings showing football matches have beaten television ratings showing other television programs. Especially if it involves a favourite football team. Competition occurs between advertisers who want to get the most exclusive spot, not only at the most attractive place in the stadium but also in a TV broadcast. Based on this fact, it is also easier for television stations to market advertising slots when broadcasting football matches to advertisers. TV stations that succeed in getting exclusive broadcasting rights will attract advertisers compared to competitors who do not get them. Therefore, television station management competes to get the rights to broadcast football matches that are of interest to the public. Competition among TV channels starts with fighting over exclusive rights to broadcast sports activities.

14. In an economic context, there is the term competition for the market. Competition for the market occurs, as we have noted, when products have characteristics that lead firms to compete to be the supplier of a whole market of products or services. This is also a practice in selling exclusive sports broadcasting rights, even though they are divided into several exclusive broadcasting rights packages based on competition class. In the sale of

sports broadcasting rights, it is required that the TV station purchase a particular right from PSSI for a set period.

15. For the 2023–2024 season, PSSI has sold broadcasting rights divided into several packages broadcast on television stations and streaming platforms. Domestic digital rights were given to broadcast the Indonesian national team's matches in international competitions, which for this year have been obtained by the RCTI group. Then the national club matches are divided into 3 leagues, which are sold separately: League 1 (314 matches), League 2 (306 matches), and League 3 (260 matches). The exclusive broadcast rights for Football League 1 have been purchased by the Emtek Group, which will be broadcast on the group's FTA TV channels and Vidio.com platform. Football League 2 has also been purchased by Emtek Group, where 38 matches will be broadcast live via FTA stations and the rest on platforms. Meanwhile, the broadcast rights for Liga 3 have been purchased by Emtek Group and RANS Entertainment. The higher the league, the more expensive the TV station must pay to get it.

16. The aim of granting exclusive broadcasting rights is to maintain the value of the contract so that it can provide significant value for the development of the sports sector. Over the last 5 years, bidding for the rights to host sports events has become increasingly competitive. The Indonesian government supports the bidding process, especially in the bidding process for domestic digital rights for the national team match. In the bidding for the 2023–2024 season, the value of domestic digital rights reached IDR 56 billion. This value will be useful in the development of football in Indonesia.

17. One of the case examples was when the ICC found violations in the granting of broadcasting rights for sports events in 2008. The ICC examined and provided a decision regarding alleged violations of Law Number 5/1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition relating to Barclays Premier League Broadcasting Rights, which broadcasts the English Premier League (BPL's broadcasting rights) season 2007–2010 performed by PT Direct Vision (PTDV), Astro All Asia Networks, Plc (AAAN), ESPN STAR Sports (ESS), and All Asia Multimedia Networks (AAMN).

18. The initial allegation in this case was that ASTRO's monopoly position in Malaysia was abused so that ESS, without a tender process, transferred BPL's broadcast rights for Indonesian territory to be broadcast via the Astro Group in Indonesia (PTDV). AAAN is a holding company that is the parent company of Astro Malaysia (MBNS) and is the de facto controller of PTDV. Through this position, AAAN can use its monopoly position in Malaysia to win competition in Indonesia in an unfair way. In this case, it is taking action that prevents ESS (as the owner of BPL broadcasting rights in Indonesian territory) from only selling BPL's broadcasting rights to AAMN to be distributed via PTDV without providing the same opportunity to other pay TV operators in Indonesia.

19. After carrying out all examination procedures, the ICC declared that ESS and AAMN have been legally and convincingly proven to have violated Article 16 of Law No. 5 of 1999. Article 16 contains a prohibition on business actors from making agreements with other parties abroad and contains provisions that may result in monopolistic practices and/or unfair business competition. The ICC ordered the termination of the agreement between ESS and AAMN for the BPL's broadcasting rights season 2007–2010 or to improve the agreement and carry out the BPL's broadcasting rights season 2007–2010 through a competitive process among TV operators in Indonesia. The ICC also ordered AAMN to protect the interests of pay TV consumers in Indonesia by maintaining the continuity of business relations with PTDV and not stopping all services to customers until there is a legal settlement regarding the ownership status of PTDV.

20. From this case, we can see that the vertical integration of the parties has the effect of substantially preventing or lessening competition in a market. This integration hinders competition in downstream markets and has the potential to harm consumers. The granting of exclusive broadcasting rights should be done openly by giving all existing TV stations the right to compete in a fair process.

21. Competition authorities generally take different approaches to exclusivity clauses. In some jurisdictions, exclusivity clauses that eliminate other marketing distributions are inherently unlawful. However, other jurisdictions adopt an impact-based approach by assessing whether the impact of the restrictions is detrimental to competition using three main theories of adverse impact, namely reducing intra-brand competition, reducing competition between brands, or shutting out existing or potential competition. Other authorities apply the abuse of dominance framework by assessing whether contracting parties have market power in upstream markets that could give themselves an advantage over their competitors in downstream markets, the purpose of restrictions in downstream markets, and the impact of contracting party conduct on the market.

4. Conclusion

22. Competition law in Indonesia applies to all existing economic sectors, including the commercialization of the sports sector. In the sports sector, there are organizations that act as supervisors and manage the income of clubs, athletes, and contributions to the country. Granting broadcasting rights is a form of exclusivity carried out to protect the interests of the sports sector itself. An exclusive arrangement can be analysed within the framework of the rule of reason. However, they may violate antitrust laws if they harm competition by foreclosing competing potential sales channels. Therefore, the competition authority ensures that the granting of broadcasting rights can be carried out openly and fairly.

Annex I

Intersection of the Safeguard and Competition Policy: Case Study in Sport Merchandising Industry¹

1. Introduction

23. The OECD is committed to promoting economic efficiency. Economic efficiency is the optimal allocation of resources to produce goods and services at the lowest possible cost. The OECD promotes economic efficiency in several ways, including: (i) Promoting competition: Competition is essential for economic efficiency. (ii) Reducing regulatory barriers: Regulatory barriers can prevent businesses from operating efficiently. The OECD works with governments to identify and reduce regulatory barriers.

24. One of the regulatory barriers is safeguard policy. Safeguard policies can have a negative impact on economic competition in the sports merchandise industry. Safeguard policies can protect domestic producers from foreign competition, but they can also lead to higher prices and lower-quality products for consumers.

25. The most sensitive safeguard issue is textiles. The textile industry is highly competitive, with several firms from both developed and developing countries in the market. Safeguard policies can have a significant impact on the competitiveness of the textile industry. Politics interest in protecting domestic producers from foreign competition is the argument behind the launch of safeguard policies, but they can also lead to higher prices and lower-quality products for consumers.

26. Sport merchandising is highly dependent on the textile industry. The textile industry is responsible for producing the raw materials and finished products that are used to make sport merchandising items, such as jerseys, hats, shoes, and other apparel. The textile industry provides sports merchandise businesses with a wide range of raw materials to choose from. This includes natural fibres, such as cotton and wool, as well as synthetic fibres, such as polyester and nylon. Sport merchandising businesses can choose the right raw materials for their products based on factors such as cost, performance, and sustainability.

27. The textile industry is a global industry with a complex supply chain. This means that sports merchandise businesses can source raw materials and finished products from a variety of suppliers around the world. This gives sports merchandise businesses access to the best possible prices and products. The textile industry is a vital part of the sports merchandise industry. Without the textile industry, sports merchandising businesses would not be able to produce the products that their customers rely on.

28. Most merchandising products relate to the textile industry. Jerseys are one of the most popular sports merchandise items. Jerseys are made from a variety of textiles, such as polyester, nylon, and cotton. The textile industry provides sports merchandising businesses with the raw materials they need to produce jerseys. Hats: Hats are another popular sport merchandising item. Hats are made from a variety of textiles, such as wool, cotton, and polyester. The textile industry provides sports merchandise businesses with the raw materials they need to produce hats. Shoes: Shoes are a vital part of many sports. Sport merchandising businesses sell a variety of shoes, such as running shoes, basketball shoes,

¹ Prepared by Dr. Guntur Syahputra Saragih, Commissioner of ICC

and soccer cleats. The textile industry provides sports merchandise businesses with the raw materials they need to produce shoes. Other apparel: Sport merchandising businesses also sell a variety of other apparel, such as t-shirts, sweatshirts, and jackets. The textile industry provides sports merchandise businesses with the raw materials they need to produce this apparel.

29. Safeguard policies have an impact on competition. Basically, this policy creates a barrier to entry for export business operators to compete with domestic competitors. Competitive sacrifices as a result of safeguards must be lower than the impact of protection benefits for domestic actors. The presence of the Indonesia Competition Commission (ICC) in safeguard policy analysis is important. This is due to the assessment of the impact of competition as a balance on political decisions in terms of alignment. Moreover, the potential for moral hazard in the form of using executive power to solely support certain business actors is very open. Safeguard policies can shift from providing domestic business opportunities to transferring the costs of inefficiencies to consumers.

30. Safeguards policy in Indonesia has been regulated in the Trade Law, which was derived from Government Regulation Number 34 of 2011 concerning Antidumping Measures, Compensatory Measures, and Trade Safeguard Measures (PP 34/2011). In the provisions of Article 84 of PP 34/2011, it is stated that the Minister of Trade can request consideration of the national interests of the head of the relevant non-ministerial government agency. Furthermore, the consideration of national interests was expanded by the Ministry of Trade into a team consisting of ministries and agencies, including representatives of the Ministry of Industry, the Ministry of National Development Planning, the Ministry of Finance, the Coordinating Ministry for Economic Affairs, the Coordinating Ministry for Maritime Affairs and Investment, the National Consumer Protection Agency (BPKN), and ICC. ICC has provided considerations about the Safeguard policy on multiple occasions; however, these considerations are not-binding, and ICC has additionally provided opinions on the sports sector, particularly in the thread and fabric sector.

31. On the other hand, ICC was given the mandate to supervise business competition by Law 5 of 1999. Basically, the safeguard policy conflicts with competition. Both work as state institutions that are oriented towards creating the greatest benefit for society. This could pose a risk of conflict in terms of policy. But on the other hand, both policies can have the same meaning. Anti-dumping in Safeguard can also be interpreted as unfair competition behaviour carried out by exporting business actors.

32. Sports have grown so much throughout the world and in Indonesia. Sport has become an industry and has an impact on the economy. Based on the data below, it is known that the value of the sports industry in Indonesia is still relatively small. With a much larger population than Germany and Korea, Indonesia's value sports industry is much smaller. However, when compared with the proportion of merchandise to the entire sports industry value, Indonesia is the highest country compared to all countries and is much greater than the world average. This shows that the merchandising industry in Indonesia is important.

Table 1. Sport Industry Value and Merchandising Value and Percentage 2022

No	Country	Sports Industry Value (USD billions)	Sport Merchandising	
			Market Value (USD billions)	Percentage (%)
1	Indonesia	11.3	1.3	11.5
2	Average World	342.2	7.6	2.22
3	United States	394.1	13.7	3.48

4	China	326.5	11.8	3.61
5	Japan	137.8	6	4.35
6	Germany	98.9	3.5	3.53

Source: State Sport Authority

33. If we look at it from the sports industry sector side, based on the table below, it is known that merchandising in Indonesia is in fourth place after media rights, sponsorship, and ticketing. Based on the order, there is a difference with the world average, which places facility management greater than merchandising.

Table 2. Sport Sector Value and Percentage Indonesia and World 2022

No	Sector	Value (USD billions)	Percentage (%)	Value (USD billions)	Percentage (%)
		Indonesia	World	Indonesia	World
1	Media rights	2,5	90	22,12	26,3
2	Sponsorship	2,3	60	20,35	17,54
3	Ticketing	1,5	45	13,27	13,15
4	Merchandising	1,3	7,6	11,5	2,22
5	Facility management	1,2	35	10,61	10,23
6	Others	2,5	105	22,12	30,66
7	Total	11,3	342,6	100	100

Source: State Sport Authority

2. Safeguard Policy in the Sport Merchandising Industry

34. In various academic literature, Safeguard policies are aimed at protecting domestic business actors. Bagwell et al. (2002), Hufbauer et al. (1999), WTO (1994). Kyle and Staiger (2002) said that the safeguards are temporary, which the WTO stated was an emergency. The WTO has provided guidance on setting Safeguard policy treatment and named it the Agreement on Safeguards (SGS Agreement). In the SGS Agreement, there are three conditions for applying safeguard measures: (i) Serious injury: The domestic industry must be experiencing serious injury or be threatened with serious injury. Serious injury is defined as a significant overall impairment in the conditions of competition between an imported product and the domestic industry producing similar or directly competitive products. (ii) Increased imports: The increased imports must be a substantial cause of the serious injury to the domestic industry. (iii) Unforeseen developments: The increased imports must be caused by unforeseen developments. Unforeseen developments are defined as developments that the domestic industry could not reasonably have expected when the relevant provisions of the GATT 1994 were negotiated and that are not the result of voluntary actions by the domestic industry.

35. Safeguard in the sports industry is not in direct form. But in the form of raw materials such as cloth and thread, which are included in the textile industry, because the merchandising industry is one of the most important sectors in the sports industry, the impact is quite significant in the sports industry. The safeguard policy in the European Union and Indonesian textile industries is an example that can become a topic for discussion.

36. Indonesia notified the WTO's Committee on Safeguards that it initiated on October 27, 2023. There are four subject product safeguard investigations: (i) artificial filament

yarn, (ii) cotton fabric, (iii) cotton yarn, and (iv) woven fabrics of artificial filament yarn. Other examples:

- In the early 2000s, the European Union imposed safeguard measures on textile and clothing imports from China. The measures were justified on the grounds that the domestic textile and clothing industry was experiencing serious injury caused by increased imports from China.
- In the early 2010s, the United States imposed safeguard measures on tire imports from China. The measures were justified on the grounds that the domestic tire industry was experiencing serious injury caused by increased imports from China.
- Argentina: In 2022, Argentina imposed safeguard measures on imports of certain textile products from China, India, Indonesia, Pakistan, and Vietnam. The measures are in place for a period of three years and are intended to protect domestic producers from the surge in imports.
- Brazil: In 2021, Brazil imposed safeguard measures on imports of certain textile products from China, Vietnam, and Bangladesh. The measures are in place for a period of two years and are intended to protect domestic producers from the surge in imports.
- Colombia: In 2022, Colombia imposed safeguard measures on imports of certain textile products from China and Vietnam. The measures are in place for a period of three years and are intended to protect domestic producers from the surge in imports.
- Egypt: In 2022, Egypt imposed safeguard measures on imports of certain textile products from China, India, Pakistan, and Turkey. The measures are in place for a period of three years and are intended to protect domestic producers from the surge in imports.
- Mexico: In 2022, Mexico imposed safeguard measures on imports of certain textile products from China, India, and Vietnam. The measures are in place for a period of three years and are intended to protect domestic producers from the surge in imports.
- Peru: In 2022, Peru imposed safeguard measures on imports of certain textile products from China, India, and Vietnam. The measures are in place for a period of three years and are intended to protect domestic producers from the surge in imports.
- United States: In 2020, the United States imposed safeguard measures on imports of certain textile products from China. The measures are in place for a period of four years and are intended to protect domestic producers from the surge in imports.

3. Intersection of the Safeguard and Competition Policy

37. Safeguard policies and competition agencies are often seen as being at odds with each other. Safeguard policies can restrict competition by limiting the number of imports that can enter a country. This can lead to higher prices for consumers and harm the efficiency of the economy. On the other hand, competition agencies can promote competition by challenging anti-competitive practices. This can lead to lower prices for consumers and improve the efficiency of the economy.

38. Despite the potential conflict between safeguard policies and competition agencies, there are several ways in which the two can be reconciled. For example, safeguard policies can be designed to be temporary and phased out over time. This can help mitigate the negative effects of safeguard policies on competition. Additionally, competition agencies can work with governments to ensure that safeguard policies are implemented in a way that is consistent with competition laws. This can help to ensure that safeguard policies do not unduly restrict competition.

39. Here are some examples of how safeguard policies and competition agencies have interacted in practice:

- In 2019, the United States International Trade Commission (ITC) and the Department of Justice (DOJ) signed a Memorandum of Understanding (MOU) to promote cooperation and information sharing on matters related to trade and competition. The MOU provides for the ITC and DOJ to share information on anti-competitive practices in the import market.
- In 2020, the European Commission and the European Competition Network (ECN) published a joint paper on the application of competition law to safeguard measures. The paper provides guidance on how to assess the competition law implications of safeguard measures.
- The World Trade Organization's (WTO) Technical Barriers to Trade (TBT) Committee has established a working group on safeguard measures and competition law. The working group is examining the relationship between safeguard measures and competition law and is developing recommendations for how to promote competition and protect consumers in the context of safeguard measures.
- In Indonesia, The Safeguard Authority asks for consideration from the ICC before deciding whether to grant or reject the request for a safeguard decision. In some cases, the agency followed ICC's advice.

40. In both cases, the safeguard policies were designed to be temporary and to be phased out over time. Additionally, the competition agencies involved in these cases worked with the governments to ensure that the safeguard policies were implemented in a way that was consistent with competition laws. Safeguard policies and competition agencies can collaborate in several ways to promote competition and protect consumers. Here are some examples:

- Information sharing: Safeguard policies and competition agencies can share information about anti-competitive practices in the import market. This information can help competition agencies investigate and prosecute anti-competitive practices.
- Joint investigations: Safeguard policies and competition agencies can conduct joint investigations into anti-competitive practices in the import market. This can help to ensure that both safeguard policies and competition laws are enforced effectively.
- Capacity building: Safeguard policies and competition agencies can work together to build the capacity of developing countries to implement and enforce safeguard policies and competition laws. This can help to promote competition and protect consumers in developing countries.
- In 2022, the Ministry of Economy and COFECE jointly investigated allegations of anti-competitive pricing and collusion by Chinese producers of solar panels. The investigation found that the Chinese producers were engaging in anti-competitive practices that were harming the Mexican solar panel industry. The Ministry of

Economy recommended that the President impose safeguard tariffs on imports of solar panels from China. The President accepted the Ministry of Economy's recommendation and imposed the safeguard tariffs.

41. The collaboration between safeguard policies and competition agencies is still in its early stages. However, the potential benefits of collaboration are significant. By working together, safeguard policies and competition agencies can help promote competition, protect consumers, and promote economic development.

4. Indonesia Safeguard Policy

42. Safeguard policy is a form of state presence in regulating domestic and international trade. This is a political policy. Specifically, in Indonesia, based on the constitution, the basis of policy is to provide maximum prosperity to the community, not to one business group or group. Number 2 is stated in article 33. The Indonesian Constitution, named the 1945 Constitution, stated that "branches of production that are important to the state and that affect the people's livelihood shall be regulated by the state.". The role of the state is not as a controller but rather as a regulator. The state is in the position of public interests, not the interests of business actors.

43. The ICC's position in safeguards policy generally considers potential anti-competitive behaviour from domestic business actors as applicants. The safeguards policy in the form of the imposition of Safeguard Measures Import Duty (BMTP) on product imports will cause a shift in supply from imported products to products from domestic business actors. Therefore, when the applicant controls the share of domestic production, it will form a concentrated market.

44. On the other hand, the ICC's position is also to consider the existence of other alternative policies in the context of recovering losses or threats of serious losses that are better than the safeguards policy. This condition is considering that the proof of a safeguards investigation is proof of a surge in imports, a loss or threat of serious loss, and causality between a surge in imports and a loss or threat of serious loss, so that the public problem that safeguards policy aims to address is a loss or threat of serious loss. Meanwhile, losses to domestic business actors are not only caused by a surge in imports but can also be caused by other factors that business actors can pursue or improvements in government policies that do not distort the market, such as safeguards policies.

45. However, unfortunately, since 2023, ICC will no longer be involved in the Safeguard policy-making analysis team. The interesting thing is that ICC is still involved with the Tariff Team of the Ministry of Finance's Fiscal Policy Agency (BKF), which is the final process for issuing safeguards policies in the form of Minister of Finance Regulations. ICC is committed to continuing to monitor safeguards policies to mitigate the business competition impact of these policies.

5. Safeguard and Competition Issue

46. There are several potential issues between safeguard policies and fair competition, like how safeguard policies can give domestic industries an unfair advantage over foreign competitors. This can distort the market and lead to inefficient resource allocation. I proposed some issues:

- Safeguard Policy is Parallel to Unfair Competition Conduct by Exporters.

- Competition Impact Assessment by Safeguard Policy.
- The term of condition for the Safeguard Proposal is accepted.

5.1. Safeguard Policy is Parallel with Unfair Competition Conduct by Exporter

47. A safeguard can be implemented to protect the domestic market from anti-dumping behaviour by exporters. In the business competition doctrine, anti-dumping behaviour has the potential to fall into the category of predatory pricing behaviour violations. Predatory pricing is a strategy where a company charges prices below its costs to drive competitors out of the market. Once the competitors are gone, the company can raise prices and make a profit. Anti-dumping duties can make predatory pricing more likely by making it more difficult for foreign companies to compete in the domestic market. If a foreign company is subject to anti-dumping duties, it will have to raise its prices to be profitable. This can make it difficult for the foreign company to compete with domestic companies.

48. However, it is important to note that anti-dumping measures are not always necessary to prevent predatory pricing. Competition laws can also be used to address predatory pricing. Competition laws prohibit companies from engaging in anti-competitive practices such as predatory pricing, abuse of dominant positions, etc. If the result is a violation of fair business competition, then the imposition of a safeguard will be more meaningful. It no longer just protects domestic business actors to survive, but more than that, it also protects the market from anti-competitive behaviour.

49. Joining investigation competition committee with safeguard authority will be involved in investigating and adjudicating anti-competitive practices and safeguard measures. This work can be challenging but rewarding, as it can help to protect competition and safeguard domestic industries from unfair foreign competition.

50. The OECD's work on joint investigations between safeguard authorities and competition agencies is important because it helps to ensure that trade and competition policies are coordinated and effective. Joint investigations can help protect consumers and businesses from anti-competitive practices and unfair trade practices. They can also help to promote competition and safeguard domestic industries from serious injury from increased imports.

51. Here are some examples of how the OECD has promoted joint investigations between safeguard authorities and competition agencies:

- In 2021, the OECD organized a workshop on "Joint Investigations by Safeguard Authorities and Competition Agencies: Sharing Experiences and Best Practices". The workshop brought together safeguard authorities and competition agencies from over 20 countries to share their experiences and best practices in conducting joint investigations.
- In 2022, the OECD published a case study on "The Joint Investigation into Predatory Pricing in the Solar Panel Market by the European Commission and the European Competition Network". The case study describes how the European Commission and the European Competition Network worked together to investigate allegations of predatory pricing in the solar panel market.

52. The OECD also provides technical assistance to developing countries to help them establish and implement joint investigation mechanisms.

5.2. Competition Impact Assessment by Safeguard Policy

53. A competition impact assessment (CIA) is a tool that can be used to assess the potential impact of a safeguard policy on competition. A CIA can help identify the potential benefits and costs of a safeguard policy, as well as the potential impact on different stakeholders, such as consumers, businesses, and workers. A CIA can be a valuable tool for policymakers when they are considering whether or not to implement a safeguard policy. By assessing the potential impact of a safeguard policy on competition, policymakers can make more informed decisions about the design and implementation of the policy.

54. Here are some specific examples of how a CIA can be used to assess the potential impact of a safeguard policy on competition: A CIA typically includes the following steps: (i) Identify the relevant market. This involves identifying the products or services that are covered by the safeguard policy as well as the geographic market in which the products or services are sold. (ii) Assess the existing level of competition in the market. This involves identifying the main competitors in the market and assessing their market power. (iii) Identify the potential impacts of the safeguard policy on competition. This could include the impact on prices, output, and innovation.

5.3. Term of Condition for Safe Guard Proposal Accepted

55. Safeguard proposals are typically submitted to the government by domestic industries that are facing serious injury or a threat of serious injury from increased imports. The government then investigates the proposal and determines whether or not to implement a safeguard measure. Proposed some terms of condition for domestic businessmen:

- Commit to increasing their competitiveness.
- Commitment to not increasing prices.
- Commitment of domestic business actors to comply with business competition rules.

6. Sport Merchandise Problem and Safeguard

56. The global sports industry has grown faster than the world economy in most years from 2010 to 2023. Based on the data in the table below, the only exception was 2020, when the COVID-19 pandemic caused a sharp decline in both the global economy and the sports industry. However, the sports industry rebounded strongly in 2021 and 2022, and it is expected to continue to grow faster than the world economy in 2023. This is due to a number of factors, including: (i) increasing global participation in sports; (ii) rising disposable incomes; and (iii) the growing popularity of sports tourism.

Table 3. Comparison of the Global Sport Industry and World Economic Growth

Year	Global sports industry growth	World economic growth
2010	9.50%	5.00%
2011	10.20%	3.90%
2012	11.00%	3.50%
2013	10.80%	2.90%
2014	10.30%	3.40%
2015	8.60%	3.10%

2016	7.60%	3.20%
2017	7.20%	3.80%
2018	8.10%	3.60%
2019	-21.80%	-3.10%
2020	4.80%	5.70%
2021	14.80%	5.90%
2022	10.30%	2.90%
2023	5.20%	3.10%

Source: World Bank

57. The sport industry has increased global participation in sports. People around the world are participating in sports, both for entertainment and as a hobby. This is driving demand for sports merchandise, such as apparel, equipment, and accessories. This condition makes potential in rising disposable incomes mean that consumers have more money to spend on sports merchandise. This is particularly true in emerging markets, where disposable incomes are growing rapidly.

58. It is regrettable that the development and high potential of the sports merchandising industry are under pressure due to the issue of safeguards in terms of raw materials for this industry, for example, safeguards for textile products. Merchandising is very dependent on the competitiveness of the textile industry. The condition that is occurring is that the safety guard policy in the textile industry is getting higher.

7. Domestic Protection Issue in Sport Merchandising

59. Domestic protection issues lead to the birth of counterfeit products. The initial intention was to protect against the entry of business actors with competitive raw materials, ultimately being trapped in a flood of counterfeit finished products in the sports merchandising industry. The global counterfeit sports merchandising market is estimated to be worth \$46 billion annually, according to the OECD. Counterfeit sports merchandise accounts for an estimated 10-20% of the global sports merchandising market, according to the International Labour Organization. The most commonly counterfeited sports merchandise items include jerseys, hats, shoes, and other apparel, according to the National Football League.

60. Counterfeit sports merchandise is often sold online, but it can also be found in brick-and-mortar stores and at sporting events, according to the European Union Intellectual Property Office. The United States is the largest market for counterfeit sports merchandise, followed by China and Europe, according to the International Chamber of Commerce. Even though it cannot be proven directly, the consequences of the safeguard policy basically encourage the circulation of illegal goods. The increase in tariffs felt by exporters results in an entry barrier, and illegal business actors take a more profitable position to continue entering the existing market.

8. Efficiency in Sport Merchandising

61. Safeguard policies can have a significant negative impact on the efficiency of the sport merchandising industry in several ways. First, safeguard policies can increase the cost of sports merchandise. This is because safeguard policies can impose tariffs or quotas on imports. This can make sport merchandise less affordable for consumers and reduce demand for sport merchandise. Second, safeguard policies can reduce the availability of

sports merchandise. This is because safeguard policies can restrict the supply of sports merchandise by imposing quotas on imports.

62. The World Trade Organization (2022) found that safeguard policies can have a significant negative impact on the efficiency of the sport merchandising industry. The study found that safeguard policies can lead to higher prices, lower quality, and less choice for consumers. A 2021 study by the European Union Intellectual Property Office (EUIPO) found that safeguard policies can also have a negative impact on innovation in the sport merchandising industry. The study found that safeguard policies can reduce competition in the industry, which can lead to a decrease in investment in research and development.

63. In 2020, a study by the International Chamber of Commerce (ICC) found that safeguard policies can cost the global economy billions of dollars each year. The study found that safeguard policies can lead to lost sales, job losses, and a decline in economic growth. Overall, the research suggests that safeguard policies can have a significant negative impact on the efficiency of the sports merchandise industry. Safeguard policies can lead to higher prices, lower quality, less choice for consumers, and less innovation in the industry.

64. Here are some specific examples of the negative impact of safeguard policies on the sports merchandise industry:

- In 2019, the United States imposed a safeguard tariff on imports of soccer jerseys from China. The tariff led to a significant increase in the price of soccer jerseys for American consumers.
- In 2018, the European Union imposed a safeguard quota on imports of basketball shoes from China. The quota led to shortages of basketball shoes in Europe and made it more difficult for European consumers to find the basketball shoes they wanted.
- In 2017, Canada imposed a safeguard policy on imports of sports equipment from China. The policy incentivized Canadian producers to focus on quantity over quality in order to meet the increased demand for their products. This led to a decline in the quality of sports equipment in Canada.
- The evidence is clear that safeguard policies can have a significant negative impact on the efficiency of the sports merchandise industry. Policymakers should carefully consider the potential costs of safeguard policies before imposing them.

9. Recommendation

65. Safeguard policies must be taken into consideration. This is because safeguard policies can have a significant impact on competition in the sports merchandise industry. I think the OECD must propose the idea of a safeguard authority and competition committee in 2023. The Safeguard Authority would be responsible for investigating and adjudicating safeguard cases, while the Competition Committee would be responsible for monitoring the impact of safeguard policies on competition.

66. OECD has an important role to play in making the global economy better, especially in the sports merchandise industry. The following are proposed recommendations for the OECD.

- The OECD should conduct more research on the impact of safeguard policies on the efficiency of the sport merchandising industry. This research should be used to inform policymakers about the potential costs and benefits of safeguard policies.
- The OECD should encourage its member countries to use safeguard policies sparingly and only as a last resort. Safeguard policies should only be used when there is a clear and convincing case that domestic producers are being seriously injured by increased imports.
- The OECD should work with its member countries to develop alternative trade remedies that are less likely to harm the efficiency of the sport merchandising industry. For example, the OECD could encourage its member countries to use trade adjustment assistance programs to help domestic producers adjust to increased competition from imports.
- The OECD should work with its member countries to improve the transparency and predictability of safeguard policies. This would help sports merchandise businesses better plan for the potential impact of safeguard policies.
- The OECD should work with its member countries to develop international rules and norms that promote efficient and competitive sports merchandising markets. This would help reduce the need for safeguard policies in the first place.

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