

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)
(Central Board of Excise and Customs)

Notification No. 37/2016 - Customs (N. T.)

New Delhi, the 4th March, 2016

G.S.R. _____(E).— In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975) read with sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.— (1) These rules may be called the India-ASEAN Trade in Goods Agreement (Safeguard Measures) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.— (1) In these rules, unless the context otherwise requires,-

- (a) “Act” means the Customs Tariff Act, 1975 (51 of 1975);
- (b) “critical circumstances” means circumstances in which there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry and where delay in imposition of provisional safeguard measure would cause irreparable damage to the domestic industry;
- (c) “Director General” means the Director General (Safeguard) appointed by the Central Government under sub-rule (1) of rule 3 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997;
- (d) “domestic industry” means the producers –
 - (i) as a whole of the like good or a directly competitive good in India; or
 - (ii) whose collective output of the like good or a directly competitive good in India constitutes a major share of the total production of the said good in India;
- (e) “good” means material or product;

- (f) “increased imports” includes increase in imports from the member State of the Association of Southeast Asian Nations, whether in absolute terms or relative to domestic production;
- (g) “interested party” includes, -
 - (i) any exporter or producer from the member States of the Association of Southeast Asian Nations or importer of the good subjected to investigation for purposes of taking safeguard measure or a trade or business association, majority of the members of which are producers, exporters or importers of such a good;
 - (ii) the Governments of the exporting member States of the Association of Southeast Asian Nations; and
 - (iii) a producer of the like good or directly competitive good in India or a trade or business association, a majority of members of which produce or trade the like good or directly competitive good in India;
- (h) “like good” means a good which is identical or alike in all respects to the good under investigation;
- (i) “member State of the Association of Southeast Asian Nations” means a country mentioned in Annexure IV to the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 189/2009 – Customs (N.T.), dated the 31st December, 2009, published vide number G.S.R. 937 (E), dated the 31st December, 2009 as amended from time to time;
- (j) “serious injury” means a significant overall impairment of the domestic industry;
- (k) “threat of serious injury” means a clear and imminent danger of serious injury on the basis of facts and not merely on allegation, conjecture or remote possibility; and
- (l) “Trade Agreement” means the ‘Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of South East Asian Nations’.

(2) Words and expressions used herein and not defined but defined in the Customs Tariff Act, 1975 (51 of 1975) and the Customs Act, 1962 (52 of 1962) shall have the meanings respectively assigned to them in those Acts.

3. Duties of Director General.— Subject to the provisions of these rules, it shall be the duty of the Director General, -

- (a) to investigate the existence of serious injury or threat of serious injury to the domestic industry as a consequence of increased imports of a good into India in terms of the Trade Agreement;
- (b) to identify the good liable for safeguard measure;
- (c) to submit his findings, provisional or otherwise, to the Central Government as to the serious injury or threat of serious injury to domestic industry consequent upon increased imports of a good from one or more member States of the Association of Southeast Asian Nations due to tariff concession under the Trade Agreement;
- (d) to recommend safeguard measure which if adopted would be adequate to prevent or remedy serious injury and to facilitate adjustment;
- (e) to recommend the duration of the safeguard measure and where the period so recommended is more than a year, to recommend progressive liberalisation adequate to facilitate adjustment;
- (f) to review the need for continuation of a safeguard measure.

4. Initiation of investigation.— (1) Except as provided in sub-rule (4), the Director General shall, on receipt of a written application by or on behalf of the domestic producer of like good or directly competitive good, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by increased imports of a good due to tariff concession under the Trade Agreement.

(2) An application under sub-rule (1) shall be made in the form as may be specified by the Director General in this behalf and such application shall be supported by,-

- (a) evidence of -
 - (i) increased imports;
 - (ii) serious injury or threat of serious injury to the domestic industry;
 - (iii) a causal link between imports and the alleged serious injury or threat of serious injury;
 - (iv) the reduction or elimination of a customs duty under the Trade Agreement being a cause which contributes significantly to the

increase in imports and such increase in imports alone constitutes a substantial cause of serious injury to domestic industry:

Provided that the cause of reduction or elimination of a customs duty under the Trade Agreement need not be equal to or greater than any other cause; and

(b) a statement on the efforts being made, or planned to be made, or both, to make an adjustment to import competition.

(3) The Director General shall not initiate an investigation pursuant to an application made under sub-rule (1) unless he examines the accuracy and adequacy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding-

(a) increased imports;

(b) serious injury or threat of serious injury;

(c) a causal link between imports and the alleged serious injury or threat of serious injury; and

(d) the reduction or elimination of a customs duty under the Trade Agreement being a cause which contributes significantly to the increase in imports and such increase in imports alone constitutes a substantial cause of serious injury to domestic industry:

Provided that the cause of reduction or elimination of a customs duty under the Trade Agreement need not be equal to or greater than any other cause.

(4) Notwithstanding anything contained in sub-rule (1), the Director General may initiate an investigation *suo motu* if he is satisfied with the information received from any Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as referred to in clause (a), clause (b), clause (c) and clause (d) of sub-rule (3).

5. Principles governing investigation.— (1) The Director General shall, after he has decided to initiate investigation to determine the serious injury or threat of serious injury to domestic industry, consequent upon the increased imports of a good into India on account of tariff concession under the Trade Agreement, issue a public notice notifying his decision thereto and the public notice shall, *inter alia*, contain adequate information on the following, namely:-

(a) the name of the exporting countries and the good involved;

- (b) the date of initiation of the investigation;
 - (c) a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based;
 - (d) reasons for initiation of the investigation;
 - (e) the address to which representations by interested parties should be directed; and
 - (f) the time-limits allowed to interested parties for making their views known through appropriate representation.
- (2) The Director General shall forward a copy of the public notice to -
- (a) the Central Government in the Ministry of Commerce and other Ministries concerned, as he deems fit;
 - (b) known exporters of the good, the increased imports of which have been alleged to cause or threaten to cause serious injury to the domestic industry;
 - (c) the Governments of the exporting State and all other member States of the Association of Southeast Asian Nations; and
 - (d) other interested parties, as he deems fit.
- (3) The Director General shall also provide a copy of the application referred to in sub-rule (1) of rule 4 to -
- (a) the known exporters, or the concerned trade associations;
 - (b) the Governments of the exporting State and all other member States of the Association of Southeast Asian Nations ; and
 - (c) the Central Government in the Ministry of Commerce:

Provided that the Director General shall also make available a copy of the application, upon request in writing, to any other interested party.

- (4) The Director General may issue a notice, calling for any information in such form as may be specified by him from the exporters, foreign producers and Governments of member States of the Association of Southeast Asian Nations and such information shall be furnished by such persons and Governments in writing within thirty days from the date of receipt of the

notice or within such extended period as the Director General may allow on sufficient cause being shown.

Explanation.— For the purpose of this rule, the public notice and other documents shall be deemed to have been received one week after the date on which these documents were sent by the Director General by registered post or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The Director General may also provide opportunity to the industrial users of the good under investigation and to representative consumer organisations in cases where the good is commonly sold at retail level to furnish information which is relevant to the investigation.

(6) The Director General may allow an interested party or its representative to present the information relevant to investigation orally but such oral information shall be taken into consideration by the Director General only when it is subsequently submitted in writing.

(7) The Director General shall make available the evidence presented to him by one interested party to the other interested parties, participating in the investigation.

(8) In case where an interested party refuses access to or otherwise does not provide necessary information within the period specified by the Director General or significantly impedes the investigation, the Director General may record his findings on the basis of the facts available to him and make such recommendations to the Central Government as he deems fit under such circumstances.

(9) Safeguard measure under these rules shall not be applied against a good originating in the territory of the member State of the Association of Southeast Asian Nations so long as its share of imports of the good concerned in India does not exceed three per cent. of the total imports of that good from the other member States of the Association of Southeast Asian Nations.

6. Confidential information.— (1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 5, sub-rule (2) of rule 8 and sub-rule (5) of rule 10, any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Director General and shall not be disclosed without specific authorisation of the party providing such information.

(2) The Director General may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarised, such party may submit to the Director General a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the Director General is satisfied that the request for confidentiality is not warranted or the supplier of the information is

unwilling either to make the information public or to authorise its disclosure in a generalised or summary form, he may disregard such information unless it is demonstrated to his satisfaction from appropriate sources that such information is correct.

7. Determination of serious injury or threat of serious injury.— The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account, *inter alia*, the following principles, namely :-

- (a) the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the good concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment; and
- (b) the determination referred in clause (a) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the good concerned under the Trade Agreement and serious injury or threat thereof and when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

8. Preliminary findings.— (1) The Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances may record a preliminary finding regarding serious injury or threat of serious injury.

(2) The Director General shall issue a public notice regarding his preliminary findings and send a copy of the public notice to -

- (a) the Central Government in the Ministry of Commerce and in the Ministry of Finance;
- (b) the Governments of the exporting State and all other member States of the Association of Southeast Asian Nations.

9. Application of provisional safeguard measures.— (1) The Central Government, on the basis of the preliminary findings of the Director General, may -

- (a) suspend further reduction of any rate of customs duty on the good provided for under the Trade Agreement; or
- (b) increase the rate of customs duty on the good concerned to a level not to exceed the lesser of the Most Favoured Nation applied rate on the good in effect at the time when the safeguard measure is taken, or the Most Favoured

Nation applied rate on the good in effect on the day immediately preceding the date of entry into force of the Trade Agreement.

(2) The safeguard measure under sub-rule (1) shall remain in force only for a period not exceeding two hundred days from the date on which it was imposed.

10. Final findings.— (1) The Director General shall, within eight months from the date of initiation of the investigation, or within such extended period as the Central Government may allow, determine whether, -

- (a) the increased imports of the good under investigation has caused or threatened to cause serious injury to the domestic industry; and
- (b) a causal link exists between the increased imports due to tariff concession under the Trade Agreement and serious injury or threat of serious injury.

(2) The Director General shall also give his recommendations regarding safeguard measures which would be adequate to prevent or remedy serious injury and to facilitate adjustment.

(3) The Director General shall also make his recommendations regarding the duration of the safeguard measure:

Provided that where the period recommended is more than one year, the Director General shall also recommend progressive liberalisation adequate to facilitate adjustment.

(4) The final findings, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion.

(5) The Director General shall issue a public notice recording his final findings.

(6) The Director General shall send a copy of the public notice regarding his final findings to -

- (a) the Central Government in the Ministry of Commerce and in the Ministry of Finance;
- (b) the Governments of the exporting State and all other member States of the Association of Southeast Asian Nations.

11. Application of safeguard measure.— (1) On receipt of the recommendation of the Director General, in order to prevent or remedy serious injury and to facilitate adjustment in respect of the good covered under the final findings, the Central Government may suitably

amend the notification, issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) to give effect to the provisions of the Trade Agreement, so as to -

- (a) suspend further reduction of any rate of customs duty provided for under the Trade Agreement on the good; or
- (b) increase the rate of customs duty on the good concerned to a level not to exceed the lesser of the Most Favoured Nation applied rate on the good in effect at the time when the safeguard measure is taken, or the Most Favoured Nation applied rate on the good in effect on the day immediately preceding the date of entry into force of the Trade Agreement.

(2) No safeguard measure under these rules may be imposed in respect of a good to which actions are being applied pursuant to sub-section (1) of section 8B of the Customs Tariff Act, 1975 and in the event of a safeguard duty being imposed in respect of a good under sub-section (1) section 8B of the Customs Tariff Act, 1975, any existing safeguard measure which has been imposed under these rules in respect of that good shall be terminated prior to the imposition of the action to be applied pursuant to sub-section (1) of section 8B of the Customs Tariff Act, 1975.

(3) In case, the final finding of the Director General is contrary to the prima facie evidence on whose basis the investigation was initiated and the final finding does not have recommendation for applying safeguard measures, the Central Government shall within thirty days of the publication of final findings by the Director General under rule 10, withdraw the provisional safeguard measures imposed, if any.

12. Imposition of safeguard measures on non-discriminatory basis.— Subject to the provisions of sub-rule (9) of rule 5, safeguard measures under these rules shall be non-discriminatory and applicable to the good imported from all other member States of the Association of Southeast Asian Nations.

13. Date of commencement of safeguard measure.— (1) The safeguard measure applied under rule 11 shall take effect from the date of publication of the notification, in the Official Gazette, imposing such safeguard measure.

(2) Notwithstanding anything contained in sub-rule (1), where a provisional safeguard measure has been imposed and where the Director General has recorded a finding that increased imports have caused or threaten to cause serious injury to domestic industry, it shall be specified in the notification issued under rule 11 that such safeguard measure shall take effect from the date of imposition of the provisional safeguard measure.

14. Refund of duty.— If the safeguard measure taken after the conclusion of the investigation results in a rate of duty which is lower than the rate of duty resulting from a

provisional safeguard measure already taken, the differential duty collected shall be refunded to the importer.

15. Transition period.— The right to initiate a safeguard measure on a good shall be within the transition period for that good and the transition period for a good shall begin from the date of entry into force of the Trade Agreement and end five years from the date of completion of tariff reduction or elimination for that good.

16. Duration.— (1) The suspension of the concessions granted under the provisions of the Trade Agreement or the safeguard measure levied under rule 11 shall be only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

(2) Notwithstanding anything contained in sub-rule (1) safeguard measure levied under rule 11 shall, unless revoked earlier, cease to have effect after an initial period not exceeding three years:

Provided that the Central Government may, on receipt of the recommendations of the Director General under sub-rule (1) of rule 18, extend the period of such imposition for a further period of one year:

Provided further that in no case the safeguard measure shall continue to be imposed beyond a period of four years from the date on which such safeguard measure was first imposed.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the duration of safeguard measure on the good shall terminate at the end of the transition period for that good as provided in rule 15.

(4) No safeguard measure under these rules shall be applied again to the import of a good which has been subject to such a measure, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

(5) Notwithstanding the provisions of sub-rule (4), a measure with a duration of one hundred and eighty days or less may be applied again to the import of a product if,-

- (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and
- (b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

17. Liberalisation of safeguard measure.– If the duration of the safeguard measure levied under rule 11 exceeds one year, the safeguard measure shall be progressively liberalised at regular intervals during the period of its imposition.

18. Review.– (1) The Director General may review the need for continued application of the safeguard measure in terms of the first proviso to sub-rule (2) of rule 16 and, if he is satisfied on the basis of information received by him that –

- (a) the safeguard measure is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, he may recommend to the Central Government for the continued imposition of safeguard measure;
- (b) there is no justification for the continued imposition of such measure, recommend to the Central Government for its withdrawal.

(2) The provisions of rules 4, 5, 6 and 10 shall *mutatis mutandis* apply in the case of review.

[F. No. 21000/47/2015-OSD(ICD)]

(Satyajit Mohanty)
Director to the Government of India