

**NOTIFICATIONS OF LAWS, REGULATIONS AND
ADMINISTRATIVE PROCEDURES RELATING
TO SAFEGUARD MEASURES**

KOREA

The following communication, dated 22 October 2001, has been received from the Permanent Mission of Korea.

Pursuant to Article 12.6 of the Agreement on Safeguards, the Government of Korea wishes to notify the relevant provisions of new Law and Regulation concerning safeguard measures.

This notification includes:

- (i) Relevant provisions of the Law No. 6417 entitled “Act on the Investigation of Unfair International Trade Practices and Remedy Against Injury to Industry,” which was published in the Official Gazette on 3 February 2001 and has become effective as of 4 May 2001; and
- (ii) Relevant provisions of Regulation No. 17222 entitled “Enforcement Decree of the Act on the Investigation of Unfair International Trade Practices and Remedy Against Injury to Industry”, which was published in the Official Gazette and has become effective as of 10 May 2001.

**Act on the Investigation of Unfair International Trade Practices
and Remedy Against Injury to Industry**

Article 15 (Applications for Investigations Regarding Injury to Domestic Industry Caused by Increased Imports of Particular Goods)

(1) Where increased imports of particular goods has caused or is threatening to cause serious injury to a domestic industry that produces like or directly competitive products, any party with an interest in such a domestic industry, including the head of the central administrative authorities overseeing the domestic industry, may apply to the Trade Commission for an investigation of injury to the domestic industry caused by imports of such goods.

(2) All matters concerning the scope of domestic industry, parties interested in the domestic industry, and the procedures of application under paragraph (1) above, shall be prescribed by the Presidential Decree.

Article 16 (Investigations of Injury to Domestic Industry)

(1) Upon receipt of any application under Article 15(1), the Trade Commission shall decide whether to commence an investigation in consultation with the heads of the central administrative authorities concerned within thirty days from the date of the application, and give notice of the decision to the applicant and the heads of the central administrative authorities concerned.

(2) Where the Trade Commission decides to commence an investigation under paragraph (1) above, the Trade Commission shall make a determination as to the existence of serious injury to the domestic industry concerned within four months after the decision to commence the investigation; *provided*, that in cases where matters to be investigated are complicated, or where the applicant requests the period above to be extended with justifiable reasons, the period of investigation may be extended by a period not exceeding two months.

Article 17 (Recommendations for the Safeguard Measures)

(1) When the Trade Commission has determined that there exists any serious injury or threat thereof to the domestic industry as a result of the investigation into injury under the provision of Article 16, the Trade Commission may decide on measures falling under any of the following subparagraphs (hereinafter referred to as "the Safeguard Measures") and the duration of the measures (hereinafter referred to as "the duration of the Safeguard Measures"), and may recommend within one month the implementation of the measures to the heads of the central administrative authorities concerned.

1. Adjustment of customs tariff;
2. Quantitative restrictions on imports of the goods; or
3. Other measures as determined by the Presidential Decree purposed to remedy the serious injury or facilitate structural adjustments of the domestic industry.

(2) The duration of the Safeguard Measures shall not exceed four years; *provided*, in cases it is extended in accordance with the provisions of Article 20, the total duration of the Safeguard Measures, including the extension thereof, shall not exceed eight years.

(3) In deciding on the type of the Safeguard Measures and the duration of the Safeguard Measures under paragraph (1), the Trade Commission shall comprehensively take into account impacts of the Safeguard Measures on the industries concerned, domestic price levels, consumers' interest and international trade relations, etc.

(4) The type of the Safeguard Measures and the duration of the Safeguard Measures under paragraph (1) shall be decided to the extent necessary to prevent or remedy serious injury to the domestic industry and to facilitate structural adjustments of the domestic industry.

Article 18 (Recommendations for the Provisional Safeguard Measures)

(1) Even if an investigation is processing in accordance with Article 16, the Trade Commission may recommend that the heads of the central administrative authorities concerned take the provisional Safeguard Measures in accordance with Article 17(1)(1), where, unless the provisional Safeguard Measures are taken, irreparable injuries will or are likely to result in the industry under investigation.

(2) The duration of the provisional Safeguard Measures under paragraph (1) above shall not exceed two-hundred days.

Article 19 (Applications and Withdrawals of the Safeguard Measures)

(1) In relation to the recommendation for the Safeguard Measures or the provisional Safeguard Measures under Article 18, the heads of the central administrative authorities concerned shall determine within one month whether to take the Safeguard Measures or the provisional Safeguard Measures, and shall give notice to the Trade Commission thereof; in this case, if procedural preparations, such as consultations with the major interested countries, amendment of relevant laws and subordinate statutes are necessary for the application of the Safeguard Measures or the provisional Safeguard Measures, the period required for such procedural preparations shall not be included in the calculation of the period mentioned above.

(2) In determining whether to take the Safeguard Measures or the provisional Safeguard Measures, the heads of the central administrative authorities concerned shall consult with other heads of the central administrative authorities concerned on the impacts of such measures on international trade relations, the national economy and the industry as a whole.

(3) In the event the expected duration of a Safeguard Measure is over one year, the heads of the central administrative authorities concerned shall take the Safeguard Measure which should be gradually liberalized.

(4) The heads of the central administrative authorities concerned shall withdraw application of the Safeguard Measures where causes for the Safeguard Measures no longer exist. In this case, they may seek an opinion from the Trade Commission, if necessary.

(5) Where the Safeguard Measures are ceased in accordance with paragraph (4) above, no subsequent Safeguard Measure shall be applied again to the import of a product which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied (or for two years in the event the duration of such a Safeguard Measure is less than two years); *provided*, that a subsequent Safeguard Measure with a duration of one-hundred eighty days or less may be applied again to the import of a product:

1. At least one year has elapsed since the date of introduction of a Safeguard Measure on the import of that product; and

2. 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.

Article 20 (Review)

- (1) The Trade Commission may review whether to liberalize, withdraw or extend the duration of the Safeguard Measures before the end of duration of the Safeguard Measures.
- (2) In the event that the duration of a Safeguard Measure exceeds three years, the Trade Commission shall review as provided in paragraph (1) above not later than the mid-term of the Safeguard Measure.
- (3) The Trade Commission may recommend, according to the result of review under paragraphs (1) and (2), that the heads of the central administrative authorities concerned extend the duration of the Safeguard Measures if/where the Trade Commission determines that the Safeguard Measures are still necessary for preventing or remedying serious injury to the domestic industry, and liberalize or withdraw the Safeguard Measures if/where the Trade Commission determines that there are sufficient grounds for liberalization or withdrawal thereof. Where the Trade Commission recommends extension of the duration of the Safeguard Measures under the sentence above, the Safeguard Measures shall be liberalized progressively.
- (4) Upon receipt of recommendation of liberalization, withdrawal, or the extension of the duration of the Safeguard Measures in accordance with paragraph (3), the heads of the central administrative authorities concerned shall decide whether to proceed as recommended in consultation with other heads of the central administrative authorities concerned under Article 19(2) within the period provided in Article 19(1). In this case, the heads of the central administrative authorities concerned shall give notice of the decision to the Trade Commission.

Article 21 (Safeguard Measures on Textiles and Clothing)

- (1) Where increased imports of textiles and clothing that are subject to the World Trade Organization Agreement on Textiles and Clothing have caused or are threatening to cause serious injury to the domestic industry that produces same or directly competitive products, any party who has interest in the domestic industry, and the head of the central administrative authorities concerned with the domestic industry may apply to the Trade Commission for an investigation of injury to the domestic industry.
- (2) Where the Trade Commission determines that the foregoing imports have caused or are threatening to cause serious injury to the domestic industry according to the results of investigation upon application under paragraph (1), the Trade Commission may recommend that the Minister of Commerce, Industry and Energy take the Safeguard Measures.
- (3) Matters concerning the procedures of application under paragraph (1) above and of investigation under paragraph (2) above shall be prescribed by the Presidential Decree.

Article 22 (Safeguard Measures on Services)

- (1) Where the increased supply of services by a foreign provider has caused or is threatening to cause serious injury to the domestic industry that supplies like or directly competitive services, any person who has interest in the domestic industry, and the head of the central administrative authorities overseeing the domestic industry may apply to the Trade Commission for an investigation of injury to the domestic industry.

(2) Upon receipt of an application of investigation under paragraph (1), the Trade Commission may recommend that the head of the administrative authorities concerned take the Safeguard Measures when the Trade Commission determines that such import has caused or is threatening to cause injury to the domestic industry under investigation.

(3) Necessary matters regarding the categories of services and application procedures in accordance with paragraph (1) and investigation procedures under paragraph (2) shall be prescribed by the Presidential Decree.

**Enforcement Decree of the Act on the Investigation of Unfair
International Trade Practices and Remedy Against Injury to Industry**

Article 12 (Increased Imports)

References to "increased imports" in Article 15(1) of the Act shall mean increase of quantities, absolute or relative to domestic production over a particular period of time.

Article 13 (Scope of Domestic Industry)

(1) References to "domestic industry" in Article 15(1) of the Act shall be construed as the domestic producers as a whole, producing the like or directly competitive products as the particular imported goods, or as the group of domestic producers whose collective output of the like or directly competitive products constitute a major proportion of the total domestic production of those products.

(2) Domestic industry shall be limited to domestic production only, when domestic producers under paragraph (1) engage in imports, and to the production of the like or directly competitive products with the particular imported goods only, when the domestic producers also engage in other production activities.

Article 14 (Interested Parties in Domestic Industry)

(1) References to "any party with an interest in such domestic industry" in Article 15(1) of the Act shall be construed as those indicated in the following subparagraphs:

1. A producer or a group of producers producing not less than 20 per cent of the total domestic production;
2. A group of producers comprising not less than 20 per cent of the total number of domestic producers of the goods concerned; *provided*, that in the case of agricultural, forestry, or fisheries industries, a group of producers of the goods concerned which is composed of five or more members; or
3. Labour unions of each industry, societies or associations whose foundation is permitted by the head of the central administrative authority overseeing the industry concerned, which are composed of domestic producers of the goods concerned.

(2) Where producers, etc., who fall within subparagraphs (1) or (2) of paragraph (1), import the goods concerned to the extent that the imported volume has an impact on the competition of the domestic market, those producers, etc., may be excluded from the scope of the interested parties in the domestic industry.

Article 15 (Application for Investigation of Injury to Industry)

(1) A person who makes an application for investigation (hereinafter referred to as applicant of the investigation of injury to the industry), as to whether increased imports of particular goods cause injury to the domestic industry (hereinafter referred to as investigation of injury to industry) according to Article 15(1) of the Act, shall file to the Trade Commission an application indicating the following subparagraphs attached with the materials capable of verifying the contents of the request:

1. Product name, measurement, features, uses and the name of producer of the goods concerned;

2. Exporters, importers, actual results of imports (referring to quantity and value) of the goods concerned, and expected quantity of imports;
3. Product name, measurement, features, uses and the name of producer of domestic goods which are the like or directly competitive products;
4. Circumstances in which imports of particular goods have caused or are threatening to cause serious injury to the domestic industry;
5. Current status and a forecast of the international competitiveness of the domestic industry concerned;
6. Contents for support of the domestic industry in accordance with the related laws and subordinate statutes; and
7. Contents, scope and duration of measures, which are necessary for remedying the injury to the domestic industry.

(2) Where the contents of the application or materials are incomplete, the Trade Commission may request that an applicant amend the application within a certain period of time. The date of submission of the amended material shall be deemed as the date of acceptance of the application.

Article 16 (Decision, etc., as to Commencement of Investigation of Injury to Industry)

(1) Where the application for investigation of injury to domestic industry under Article 15(1) of the Act falls under any of the following subparagraphs, the Trade Commission shall decide not to commence investigation of injury to domestic industry:

1. Where an applicant is not a person with an interest in the domestic industry concerned under Article 14, or is not the head of the central administrative authority overseeing the domestic industry concerned;
2. Where it is evident upon the evaluation of application and attached materials that imports of particular goods have not caused or are not threatening to cause serious injury to the domestic industry;
3. Where it becomes unnecessary to commence the investigation because measures to remedy injury have been taken prior to the commencement of investigation; or
4. Where an application for investigation of injury is filed for the same investigation of injury within one year from the date of decision not to commence the investigation or no injury existence decision. However, where it is clearly admitted that the explicit changes in the content of subparagraphs of Article 17(1) are made, this subparagraph is not applied.

(2) Where a decision is made regarding whether to commence the investigation of injury to the industry under Article 16 of the Act, the Trade Commission shall notify the applicant of the decision, and when the Trade Commission decides to commence the investigation it shall publish this fact in the government newspaper bulletin.

(3) Where the applicant withdraws the application of investigation after the decision of the commencement of the investigation has been made, the Trade Commission shall terminate the investigation and publish the fact of such termination in the government newspaper bulletin.

Article 17 (Decisions as to Whether Injury to Industry Exists)

(1) In reaching a decision as to whether or not injury to domestic industry has occurred, under Article 16(2) of the Act, the Trade Commission shall consider all matters set forth in the following subparagraphs:

1. Whether or not an increase in imports has occurred;
2. Whether or not there exists serious injury to the domestic industry;
3. Whether or not there exists a threat of serious injury to the domestic industry; and
4. Whether or not imports of particular goods cause or threaten to cause serious injury to the domestic industry.

(2) Upon considering matters contained in subparagraph (2) of paragraph (1), an evaluation as to whether or not the domestic industry has suffered significant and overall injury shall be made in consideration of changes in the level of sales, production, productivity, capacity utilization, profits & losses, employment, inventory, market share, etc.

(3) Upon considering matters contained in subparagraph (3) of paragraph (1), an evaluation shall be made as to whether or not serious injury, under paragraph (2) above, is clearly imminent.

(4) In the case of decisions, under paragraph (1), as to whether or not injury to the domestic industry has occurred, the Trade Commission shall publish such decision in the government newspaper bulletin and notify applicants and interested parties thereof.

Article 18 (Contents, etc., of Safeguard Measures)

Measures for remedying injury to the domestic industry or promoting industrial adjustments in subparagraph (3) of Article 17(1) of the Act include those set forth in the following subparagraphs:

1. Support available in finance and tax systems for enhancing competitiveness of the domestic industry or promoting industrial transformation;
2. Reeducation or relocation training of workers employed in the domestic industry; and/or
3. Support of technological developments for the domestic industry.

Article 19 (Recommendations for the Provisional Safeguard Measures)

(1) A party applying for an investigation of injury to industry may request that the Trade Commission recommend the provisional Safeguard Measures under Article 18(1) of the Act.

(2) The applicant for the provisional Safeguard Measures under paragraph (1) above, shall file an application form including the following information attached with materials capable of verifying the contents of the request.

1. The extent of injury to domestic industry caused by increased imports;
2. The content, extent, and duration of the provisional Safeguard Measures; and
3. Reasons justifying the necessity of the provisional Safeguard Measures.

(3) Upon receipt of the application for recommendation of the provisional Safeguard Measures under paragraph (1), the Trade Commission shall determine whether to recommend the provisional Safeguard Measures after consulting the opinion of the head of relevant central administrative authority overseeing the industry and of industry association, etc. within one month from the date of application; *provided*, that the Trade commission may extend the period by no more than one month if the matter under investigation is complicated.

(4) After receiving the Trade Commission's recommendation, the head of the central administrative authority shall determine whether to enforce the provisional Safeguard Measures under Article 19 (1); *provided*, that if the industry on which the provisional Safeguard Measures are recommended is classified as agricultural, forestry, or fisheries and if it is necessary to take urgent action due to seasonality or the perishable nature of the product, the decision on whether to enforce the provisional Safeguard Measures shall be reached within fifteen days from the date of application.

(5) Where consultation with other central administrative authorities, general authorities, or organizations concerned is necessary for the application of the provisional Safeguard Measures, etc., such as the caveat set forth in paragraph (4), the period required for such consultation and preparatory measures shall not be included in the fifteen days assessment period in Article 19(4).

Article 20 (Application of the Safeguard Measures, etc.)

(1) Where the head of the central administrative authority places a restriction on the amount of goods imported as a Safeguard Measure under Article 19(1) of the Act, the restricted amount shall exceed the annual average amount of goods imported (hereinafter referred to as the standard amount) calculated on the basis of goods imported over the last three representative years. The years when the imported amount rapidly increased or decreased in comparison with the normal import amount may be excluded in selecting the last representative years.

(2) When it is clearly admitted that the standard amount, under paragraph (1) above, cannot prevent or remedy the serious injury to the domestic industry, the head of the central administrative authority may restrict the amount below the standard amount.

Article 21 (Review, etc.)

(1) The Trade Commission may undertake an *ex officio* review or by application of an applicant for the investigation of injury to industry during the period of application of the Safeguard Measures, under Article 20(1) of the Act. In such case, extension of the Safeguard Measures may be reviewed on application.

(2) An applicant for an extension of the Safeguard Measures under paragraph (1), shall file an application form containing the facts specified in Article 15(1) (if there are any changes to the facts) with materials verifying the facts attached and the following information with supporting evidence attached to the Trade Commission six months prior to the expiration date of the Safeguard Measures:

1. The extent of self-help endeavors to improve the competitiveness of the domestic industry;
2. Evidence that the industry is under structural adjustments; and
3. Other reasons justifying the necessity of extending the Safeguard Measures.

(3) Where the Trade Commission reviews the Safeguard Measures under Article 20(2) of the Act, such review shall begin six months prior to the mid-term of the Safeguard Measures.

(4) Where the Trade Commission recommends the extension, liberalization or withdrawal of the Safeguard Measures to the head of the central administrative authority concerned under Article 20(3) of the Act, such recommendation may be made until one month prior to expiration the Safeguard Measures (the date of mid-term of the Safeguard Measures in paragraph (3)).

(5) Upon the recommendation to extend the Safeguard Measures under paragraph (4), the Trade Commission shall make a recommendation only when the Safeguard Measures continue to be necessary to prevent or remedy serious injury to the domestic industry and there is an evidence that the industry is under structural adjustments.

(6) The Trade Commission may request submission of materials such as import records and production trends of a domestic industry etc., to the head of the central administrative authority, general administrative authority, or organization presiding over the domestic industry concerned if such information is considered necessary to review the Safeguard Measures.

Article 22 (Safeguard Measures on Textiles and Clothing)

(1) In determining the existence of injury to domestic industry in relation to the Safeguard Measures on Textile and Clothing (hereinafter referred to as "the Textile Safeguard Measures") under Article 21 of the Act, the Trade Commission shall appraise whether serious injury has occurred, or the threat of serious injury to domestic industry exists, considering the changes in output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, etc. When appraising whether there is a threat of serious injury to domestic industry, the Trade Commission shall consider whether the serious injury is clearly imminent.

(2) Upon investigation and decision as to the existence of injury to textile and clothing industries by the Trade Commission, Articles 12 through 16, and 17(1), 17(4) shall apply *mutatis mutandis*.

(3) The Trade Commission may recommend the liberalization or withdrawal of the Textile Safeguard Measures to the Minister of Commerce, Industry and Energy before the expiration of the Textile Safeguard Measures where a decision is made in favour of the liberalization or withdrawal of such measures after a review of the influence and effect on domestic industry.
