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Committee on Safeguards

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**NOTIFICATION OF LAW AND REGULATIONS UNDER ARTICLE 12.6
OF THE AGREEMENT ON SAFEGUARDS**

INDIA

Supplement¹

The following communication, dated 26 May 2020, is being circulated at the request of the delegation of India.

In pursuance of Article 12.6 of Agreement on Safeguards, India herewith notifies amendment to section 8B of the Customs Tariffs Act, 1975. This amendment has been introduced through Section 116 of 'The Finance Act, 2020 (No. 12 of 2020)', thereby substituting section 8B by the following:

"8B. (1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantity and under such conditions so as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.

(2) The safeguard measures referred to in sub-section (1) shall include imposition of safeguard duty, application of tariff-rate quota or such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry:

Provided that no such measure shall be applied on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent. or where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than three per cent import share taken together, does not exceed nine per cent. of the total imports of that article into India:

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(3) Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

(4) The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.

¹ Supplements India's earlier notifications G/SG/N/1/IND/2, G/SG/N/1/IND/2/Suppl.1, G/SG/N/1/IND/2/Suppl.2.

(5) *The Central Government may, pending the determination under sub-section (1), apply provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:*

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the safeguard duty so collected:

Provided further that any provisional safeguard measure shall not remain in force for more than two hundred days from the date on which it was applied.

(6) *Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless—*

(i) it is specifically made applicable in such notification or to such undertaking or unit;

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation. –For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", and "special economic zone" shall have the same meaning as assigned to them in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944.

(7) *The safeguard duty imposed under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.*

(8) *The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such application:*

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application:

Provided further that in no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.

(9) *The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.*

(10) *The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing power, such rules may provide for—*

(i) the manner in which articles liable for safeguard measures may be identified;

(ii) the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;

(iii) the manner of assessment and collection of safeguard duty;

(iv) the manner in which tariff-rate quota on identified article may be allocated among supplying countries;

(v) the manner of implementing tariff-rate quota as a safeguard measure;

(vi) any other safeguard measure and the manner of its application.

(11) For the purposes of this section,—

(a) "developing country" means a country notified by the Central Government in the Official Gazette;

(b) "domestic industry" means the producers—

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury.

(12) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."

The aforesaid amendment incorporates provision for allowing use of tariff rate quota as safeguard measure or imposition of such measures, as the Government may consider appropriate, to curb increased quantity of imports of any article to prevent serious injury to domestic industry. It can also be accessed at page nos. 54-56 of The Finance Act-2020 (No.12 of 2020) at <http://egazette.nic.in/WriteReadData/2020/218938.pdf>.
