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Committee on Safeguards

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

INDIA

*Supplement*

The following communication, dated and received on 3 May 2021, is being circulated at the request of the delegation of India.

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Pursuant to Article 12.6 of Agreement on Safeguards, India hereby notifies the amendments to its Safeguard Rules, namely, "Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 2021". The amendment rules were notified vide Government of India's Notification No.12/2021-Customs (N.T) dated 1<sup>st</sup> February, 2021. Copy of the same is attached.

The amendment is also available in the public domain and can be accessed at <http://www.cbic.gov.in> at the following weblink:

<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt12-2021.pdf>

This supplements India's earlier notification.<sup>1</sup>

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<sup>1</sup> G/SG/N/1/IND/2/Suppl.3.

[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)

Notification No. 12/2021-Customs (N.T.)  
New Delhi, the 1<sup>st</sup> February, 2021

G.S.R. ... (E). - In exercise of the powers conferred by sub-section (10) of section 8B of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules to amend the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, namely: -

1. Short title and commencement. — (1) These rules may be called the Customs Tariff (Identification and Assessment of Safeguard Duty) Amendment Rules, 2021.

(2) They shall come into force on the 2<sup>nd</sup> February, 2021.

2. In the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter referred to as the said rules), in rule 1, in sub-rule (1), for the word "Duty", the word "Measures" shall be substituted.

3. In the said rules, in rule 2, -

(a) in clause (b), for the word "duty", the word "measure" shall be substituted;

(b) in clause (d), in sub-clause (i), for the word "duty", the word "measures" shall be substituted;

(c) for clause (f), the following clause shall be substituted, namely: -

'(f)"provisional measure" means provisional safeguard measure imposed under sub-section (5) of section 8B of the Act;' ;

(d) after clause (f), the following clause shall be inserted, namely: -

'(fa) "safeguard measure" means safeguard duty, or a tariff rate quota or such other measures imposed under sub-section (1) of section 8B of the Act;' ;

(e) after clause (g), the following clause shall be inserted, namely: -

'(ga) "WTO" means the World Trade Organisation;' ;

4. In the said rules, in rule 3, for the word "Safeguard" occurring at both the places, the words "Trade Remedies" shall be substituted.

5. In the said rules, in rule 4, -

(a) in clause (2), for the word "duty", the word "measure" shall be substituted;

(b) in clause (4), -

(i) for the word "duty" occurring at both the places, the word "measure" shall be substituted;  
(ii) in sub-clause (ii), the word "positive" shall be omitted;

(c) in clause (5), for the word "duty", the word "measure" shall be substituted.

6. In the said rules, in rule 5, -

- (i) in sub-rule (2), in clause (b), the word "positive" shall be omitted;
- (ii) in sub-rule (4), for the words "Commissioner of Customs", the words "Principal Commissioner of Customs or Commissioner of Customs, as the case may be," shall be substituted.

7. In the said rules, in rule 6, in sub-rule (1), for clause (i), the following clause shall be substituted, namely: -

"(i) the name of the exporting countries, article involved and volume of imports." .

8. In the said rules, for rule 8, the following rule shall be substituted, namely: -

**"8. 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 the following principles, namely: -

- (i) in the investigation to determine whether increased imports have caused or threatening to cause serious injury to the domestic industry, 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 article 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;
- (ii) the determination referred to in clause (i) 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 article concerned 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 and in such cases, the Director General may refer the complaint to the authority for antidumping or countervailing duty investigations, as appropriate."

9. In the said rules, in rule 10, -

- (i) for the word "duty" wherever it occurs, the word "measure" shall be substituted;
- (ii) for the words, brackets and figures "sub-section (2)", the words, brackets and figures "sub-section (5)" shall be substituted.

10. In the said rules, in rule 11, -

(i) for sub-rule (2), the following sub-rule shall be substituted, namely: -

"(2) (a) The Director General shall also give recommendations regarding the extent of measure which, if levied, would be adequate to prevent or remedy serious injury and to facilitate adjustment;

(b) the level of tariff rate quota, if imposed as a measure, may be determined having regard to the following conditions, namely: -

- (i) maintaining traditional trade flow of the article over the representative period;
- (ii) the existing and likely demand supply scenario in the country; and
- (iii) any other condition that may be considered relevant:

Provided that the tariff rate quota applied shall not reduce the quantity of imports below the level of the recent period, which shall be the average of imports in the last three years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury;

(c) tariff rate quota may be global or country specific;

- (d) specific tariff rate quota may be allocated to countries with substantial interest, considering the proportion of the share of imports of the article concerned into the country during a representative period, and having regard to all relevant factors which may have or are likely to affect the trade in the article;
- (e) in a case where the tariff rate quota is country specific, a residual tariff rate quota shall be provided for all other countries and in case the countries with specific tariff rate quota exhaust their specific tariff rate quotas, such countries may use the residual tariff rate quota available;
- (f) any unused tariff rate quota may be carried forward and added to the tariff rate quota for the subsequent period." ;
- (ii) in sub-rule (3), -
- (a) for the word "duty", the word "measure" shall be substituted;
- (b) in the proviso, the word "positive" shall be omitted.
11. In the said rules, in rule 12, for the word "duty", wherever it occurs, the word "measure" shall be substituted.
12. In the said rules, in rule 13, -
- (i) for the word "duty", occurring at both the places, the word "measure" shall be substituted;
- (ii) a proviso shall be inserted, namely:- "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 import of that article in India".
13. In the said rules, in rule 14, for the word "duty" wherever it occurs, the word "measure" shall be substituted.
14. In the said rules, for rule 15, the following rule shall be substituted, namely –
- "15. Refund of duty.** - If the safeguard measure imposed as a duty after the conclusion of the investigation is lower than the provisional measure in the form of a duty already imposed and collected, the differential shall be refunded to the importer." .
15. In the said rules, in rule 16, -
- (i) for the word "duty" wherever it occurs, the word "measure" shall be substituted;
- (ii) in sub-rule (1), the word "positive" shall be omitted.
16. In the said rules, in rule 17, for the word "duty" wherever it occurs, the word "measure" shall be substituted.
17. In the said rules, in rule 18, -
- (i) for the word "duty" wherever it occurs, the word "measure" shall be substituted;
- (ii) in sub-rule (1), in clause (i), the word "positively" shall be omitted;
- (iii) after sub-rule (1), the following sub-rule shall be inserted, namely - "(1A) The Director General may review the usage and implementation of the tariff rate quota for any modification.";
- (iv) in sub-rule (2), after the words, brackets and figures "sub-rule (1)", the words, brackets and figures "or sub-rule (1A)" shall be inserted.

18. In the said rules, after rule 18, the following rule shall be inserted, namely: -

**"19. Notification and consultation.** - (1) The Central Government shall notify to the WTO of all actions required under the WTO Agreement on Safeguards. (2) Before imposition of a safeguard measure, an opportunity to hold consultations with the members of the WTO having substantial interest as exporters of the product concerned, shall be provided."

19. In the said rules, the ANNEXURE shall be omitted.

[F.No.334/02/2021-TRU]

(Rajeev Ranjan)  
Under Secretary to the Government of India

**Note:-** The principal rules was published vide notification number 35/1997-Customs (N.T), dated the 29th July, 1997, in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 428(E), dated the 29th July, 1997.

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