

The India Singapore Trade Agreement (Safeguard Measures) Rules, 2009

Notification No. 50/2009 - Customs (N. T.)

New Delhi, dated the 12th May, 2009

22 Vaisakha, 1931 (SAKA)

G.S.R _____. In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975) read with 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 shall be called the India-Singapore Trade Agreement (Safeguard Measures) Rules, 2009.
- (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) "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;
 - (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) "Increased quantity" means absolute increase in imports from the Republic of Singapore;
 - (d) "Interested party" includes, -
 - (i) any exporter or producer from the Republic of Singapore or importer of the article 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 an article, or,
 - (ii) the Government of the Republic of Singapore, or,
 - (iii) a producer of the like article or directly competitive article in India or a trade or business association, a majority of members of which produce or trade the like article or directly competitive article in India;
 - (e) "Serious injury" means a significant overall impairment in the position of the domestic industry;
 - (f) "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;
 - (g) "Like article" means an article which is identical or alike in all respects to the goods under investigation;
 - (h) "Trade Agreement" means the "Comprehensive Economic Co-operation Agreement between the Republic of India and the Republic of Singapore".
- (2) All words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Customs Tariff Act, 1975 (51 of 1975) and the Customs Act, 1962 (52 of 1962).

3. Duties of the Director-General. -

Subject to the provisions of these rules, it shall be the duty of the Director-General, -

- (i) to investigate the existence of serious injury or threat of serious injury to the domestic industry as a consequence of increased import of the originating goods in absolute terms, on account of reduction or elimination of a customs duty in terms of the Trade Agreement;
- (ii) to identify the article liable for safeguard measure;
- (iii) 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 import of the goods due to preferential treatment under the Trade Agreement;
- (iv) to make recommendation for either, -
 - (a) suspending further reduction of any rate of customs duty on the goods provided for under the Trade Agreement, or,
 - (b) increasing the rate of customs duty on the goods to a level not to exceed the lesser of the Most Favoured Nation (MFN) applied rate of customs duty on the article in effect at the time the measure is taken, and, the Most

Favoured Nation (MFN) applied rate of customs duty on the article in effect on the day immediately preceding the date of the start of the period of investigation, or,

(c) in a case of customs duty being applied to the goods on seasonal basis, increasing the rate of customs duty to a level not to exceed the lesser of the Most Favoured Nation (MFN) applied rate of customs duty that was in effect on the goods for the corresponding season immediately preceding the date of the start of the period of investigation:

Provided that the quantum and duration of safeguard measures, if applied, would be adequate to remove the injury or threat of injury to the domestic industry.

(v) to review the need for continuance of 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 article or directly competitive article, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by increased import of an article in absolute terms due to preferential treatment under the Trade Agreement.

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

(i) evidence of -

(a) increased imports,

(b) serious injury or threat of serious injury to the domestic industry;

(c) the reduction or elimination of a customs duty under the Trade Agreement being a cause which contributes significantly to the increase in imports (but need not be equal to or greater than any other cause) and such increase in imports alone constitutes a substantial cause of serious injury to domestic industry.

(ii) a statement on the efforts being taken, or planned to be taken, or both, to make a positive 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-

(i) increased imports,

(ii) serious injury or threat of serious injury, and,

(iii) the reduction or elimination of a customs duty under the Trade Agreement being a cause which contributes significantly to the increase in imports (but need not be equal to or greater than any other cause) and such increase in imports alone constitutes a substantial cause of serious injury to domestic industry.

(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 (i), clause (ii) and clause (iii) of sub-rule (3).

5. Principles governing investigations. -

(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 import of an article into India on account of preferential treatment under the Trade Agreement, issue a public notice notifying his decision thereto. The public notice shall, *inter alia*, contain adequate information on the following namely:-

(i) the precise description of the article involved,

(ii) the date of initiation of the investigation,

(iii) a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based,

(iv) reasons for initiation of the investigation,

(v) the address to which representations by interested parties should be directed, and,

(vi) the time-limits allowed to interested parties for making their views known through appropriate representation.

(2) A copy of the public notice shall be forwarded by the Director-General to the Central Government in the Ministry of Commerce and other Ministries concerned, known exporters of the article the increased import of which has been alleged to cause **or threaten to cause serious injury** to the domestic industry, the government of the Republic of Singapore and other interested parties.

(3) The Director-General shall also provide a copy of the application referred to in sub-rule (1) of rule 4 to:-

- (i) the known exporters, or the concerned trade associations,
- (ii) the government of the Republic of Singapore, and
- (iii) 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 investigation shall be promptly terminated if imports of the subject article represent less than 2% of market share in terms of domestic sales or less than 3% of the total imports.

Explanation: - For the purpose of the this sub-rule, -

(i) market share means the value of the imports from Singapore as a percentage of value of total domestic production plus total imports during the time frame specified in clause (ii); and,

(ii) the time frame to be used in calculating the applicable percentages shall be the twelve months prior to the filing of the petition.

(5) 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 interested countries 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.

(6) The Director-General shall also provide opportunity to the industrial user of the article under investigation and to representative consumer organisations in cases where the article is commonly sold at retail level to furnish information which is relevant to the investigation.

(7) 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.

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

(9) In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period 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.

6. Confidential information. -

(1) Notwithstanding anything contained in sub-rules (1), (3) and (8) 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 generalized 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. -

(1) The Director-General shall determine serious injury or threat of serious injury to the domestic industry taking into account, *inter alia*, 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 terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(2) The determination under sub-rule (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, that the increased imports due to preferential treatment of imports under the Trade Agreement alone constitute the substantial cause of the alleged serious injury or threat of serious injury. 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.

(3) The determination under this rule, that the originating article is being imported as a result of the reduction or elimination of a customs duty provided for in the Trade Agreement, shall be made only, if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. If the increase in imports is demonstrably unrelated to such reduction or elimination, such determination shall not be made.

(4) The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination under sub-rule (3).

8. Preliminary findings. -

(1) The Director-General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he 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.

(3) The Director-General shall send a copy of the public notice to the Central Government in the Ministry of Commerce and in the Ministry of Finance.

9. Application of provisional safeguard measure. -

If the Director-General determines in his preliminary findings that as a result of reduction or elimination of a custom duty under the Trade Agreement, an originating article of the Republic of Singapore is being imported in such increased quantity in absolute terms and other such conditions that the imports of such article from the Republic of Singapore alone constitutes a substantial cause of serious injury or threat of serious injury to domestic industry, the Central Government may -

(i) suspend further reduction of any rate of customs duty on the article provided for under the Trade Agreement; or

(ii) increase the rate of customs duty on the article to a level not to exceed the lesser of, -

(a) the Most Favoured Nation (MFN) applied rate of customs duty on the article in effect at the time the measure is taken, and,

(b) the Most Favoured Nation (MFN) applied rate of customs duty on the article in effect on the day immediately preceding the date of start of the period of investigation; or

(iii) in a case of customs duty being applied to an article on seasonal basis, increase the rate of custom duty to a level not to exceed the lesser of the Most Favoured Nation (MFN) applied rate of customs duty that was in effect on the article for the corresponding season immediately preceding the date of investigation:

Provided that such safeguard measure 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 extendable by the Central Government to maximum of one year, determine whether, -

(i) the increased imports of the article under investigation has caused or threatened to cause serious injury to the domestic industry; and

(ii) a causal link exists between the increased imports due to preferential treatment under the Trade Agreement and serious injury or threat of serious injury.

(2) The Director-General shall also give his recommendation regarding safeguard measures which, if applied, would be adequate to prevent or remedy serious injury and to facilitate positive 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 positive 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 the Central Government in the Ministry of Commerce and in the Ministry of Finance.

11. Application of safeguard measures.

On receipt of the recommendation of the Director-General, the Central Government may suitably amend the notification, issued under sub-section (1) of section 25 of the Customs Act, 1962 to give effect to the provisions of the Trade Agreement, in respect of the **product covered under the final findings, in order to** prevent or remedy serious injury and to facilitate positive adjustment:

Provided that no safeguard measure shall be taken against any particular article while a global safeguard measure in respect of that article is in place. In the event of a global safeguard measure being taken in respect of a particular article, any existing bilateral safeguard which is taken against that article shall be terminated and upon termination of the safeguard measure, the rate of duty shall be the rate which would have been in effect but for the action.

12. Date of commencement of safeguard measures.

The safeguard measure taken under rule 11 shall take effect from the date of publication of the notification, in the Official Gazette whereby such measure is taken.

13. Refund of duty.

If the safeguard measure taken after the conclusion of the investigation results in a level of exemption which is lower than that already given as provisional safeguard measure, the differential duty shall be refunded to the importer.

14. Duration.

(1) The safeguard measure applied under rule 12 shall be only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate positive adjustment.

(2) Notwithstanding anything contained in sub-rule (1) of this rule, the safeguard measure applied under rule 12 shall, unless revoked earlier, cease to have effect on the expiry of two years from the date of its imposition:

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 duty should continue to be imposed, it may extend the period of such imposition by one year.

(3) Notwithstanding anything contained in sub-rule (1) of this rule, the safeguard measure taken under rule 12 shall, unless revoked earlier, cease to have effect on the expiry of three years from the date of its imposition.

15. Review.

(1) Director-General shall, from time to time, review the need for continued application of the safeguard measure and shall, if he is satisfied on the basis of information received by him that -

(i) 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 duty;

(ii) there is no justification for the continued imposition of such measure, recommend to the Central Government for its withdrawal:

Provided that where the period of application of safeguard measure exceeds one year the Director-General shall review the situation not later than the mid-term of such imposition, and, if appropriate, recommend for withdrawal of such safeguard measure or for suitable modification of the same.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding eight months from the date of initiation of such review or within such extended period as the Central Government may allow.

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