

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

INDIA

Supplement

The following communication, dated 24 August 2012, is being circulated at the request of the Delegation of India.

In pursuance to Article 12.6 of the Agreement on Safeguards, India notifies the Rules, namely, **the Safeguard Measures (Quantitative Restrictions) Rules, 2012**, framed under subsection (3) of section 9A of the Foreign Trade (Development and Regulation) Act, 1992. WTO document No. G/SG/N/1/IND/3 dated 23 September 2011 contains the provision introduced under Section 9A of the Foreign Trade (Development and Regulation) Act, 1992, as amended, giving power to the Government of India to impose quantitative restrictions as safeguard measures. Pursuant to this amendment to the Act, Safeguard Measures (Quantitative Restrictions) Rules, 2012 have been notified vide Government of India Notification No. G.S.R.381(E) dated 24 May 2012. Copy of this Notification is annexed herewith. This notification is also available at <http://dgft.gov.in/exim/2000/safeguardRulesI2012.pdf>.

Annexure

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

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
(DEPARTMENT OF COMMERCE)

NOTIFICATION
NEW DELHI, 24 May 2012

G.S.R. 381(E).--- In exercise of the powers conferred by sub-section (3) of section 9A of the Foreign Trade (Development and Regulation) Act 1992 (22 of 1992), the Central Government hereby makes the following rules, namely:

1. Short title and commencement. (1) These rules may be called the Safeguard Measures (Quantitative Restrictions) Rules, 2012.

(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 Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
- (b) "Authorised Officer" means the Authorised Officer designated as such under sub-rule(1) of rule 3;
- (c) "increased quantity" includes increase in import whether in absolute terms or relative to domestic production;
- (d) "interested party" includes:
 - (i) an exporter or foreign producer or the importer of goods (which is subject to investigation for purposes of imposition of safeguard quantitative restrictions) or a trade or business association, majority of the members of which are producers, exporters or importers of such goods;
 - (ii) the Government of the exporting country; and
 - (iii) a producer of the like goods or directly competitive goods in India or a trade or business association, a majority of members of which produce or trade the like goods or directly competitive goods in India;
- (e) "like goods" means goods which is identical or alike in all respects to the goods under investigation, or in the absence of such goods, other goods which has characteristics closely resembling those of the goods under investigation;
- (f) "quantitative restrictions" means any specific limit on quantity of goods imposed as a safeguard measure under the Act;

(g) "specified country" means a country or territory which is a member of the World Trade Organization and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

(2) The words and expressions used herein and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Responsibility of Authorised Officer for making enquiry in respect to safeguard quantitative restrictions. (1) The Central Government shall, by notification in the Official Gazette, designate an officer not below the rank of Additional Director General of Foreign Trade as an Authorised officer for making investigation for the purpose of these rules.

(2) The Authorised Officer shall be responsible for conducting investigation, under sub-section (1) of section 9A, for the purpose of imposition of safeguard quantitative restrictions and making necessary recommendation therein to the Central Government.

(3) The Directorate General of Foreign Trade shall provide secretarial support and the services of such other persons and such other facilities as it deems fit.

4. Duties of Authorised Officer. It shall be the duty of the Authorised Officer;

(a) to investigate the existence of serious injury or threat of serious injury to domestic industry as a consequence of increased import of a goods into India;

(b) to identify the goods liable for quantitative restrictions as a safeguard measure;

(c) to submit its findings, to the Central Government as to the serious injury or threat of serious injury to domestic industry consequent upon increased import of goods into India from the specified country;

(d) to recommend:

(i) the nature and extent of quantitative restrictions which, if imposed, shall be adequate to remove the serious injury or threat of serious injury to the domestic industry; and

(ii) the duration of imposition of safeguard quantitative restrictions and where the period so recommended is more than one year, to recommend progressive liberalisation adequate to facilitate positive adjustment; and

(e) to review the need for continuance of the safeguard quantitative restrictions.

5. Initiation of investigation. (1) The Authorised Officer shall, on receipt of a written application by or on behalf of the domestic producer of like goods or directly competitive goods, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by the import of a goods in such increased quantities, absolute or relative to domestic production.

(2) The application referred to in sub-rule (1) shall be made in Form appended to these rules and be supported with:

(a) the evidence of:

- (i) increased imports as a result of unforeseen development;
 - (ii) serious injury or threat of serious injury to the domestic industry; and
 - (iii) a causal link between imports and the alleged serious injury or threat of serious injury;
- (b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to increase in competition due to imports; and
- (c) a statement mentioning whether an application for the initiation of a safeguard action on the goods under investigation has also been submitted to the Director General of Safeguards, Department of Revenue.
- (3) The Authorised Officer shall not initiate an investigation pursuant to an application made under sub-rule (1), unless, it 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; and
- (c) a causal link between increased imports and alleged serious injury or threat of serious Injury.

(4) Notwithstanding anything contained in sub-rule (1), the Authorised Officer may initiate an investigation *suo moto*, if, it is satisfied with the information received from any source that sufficient evidence exists as referred to in clause (a), clause (b) or clause (c) of sub-rule (3).

6. Principles governing investigations. (1) The Authorised Officer shall, after it has decided to initiate investigation to determine serious injury or threat of serious injury to domestic industry, consequent upon the increased import of a goods into India, issue a public notice notifying its decision which, *inter alia*, contain information on the following, namely:

- (a) the name of the exporting countries, the goods involved and the volume of import;
- (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.

(2) The Authorised Officer shall forward a copy of the public notice to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, known exporters of the goods, the Governments of the exporting countries concerned and other interested parties.

(3) The Authorised Officer shall also provide a copy of the application referred to in sub-rule (1) of rule 5, to:

- (a) the known exporters, or the concerned trade association;
- (b) the Governments of the exporting countries; and
- (c) the Central Government in the Ministry of Commerce and Industry:

Provided that the Authorised Officer shall also make available a copy of the application, upon request in writing, to any other interested person.

(4) The Authorised Officer may issue a notice calling for any information in such form as may be specified in the notice from the exporters, foreign producers and governments of exporting 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 Authorised Officer 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 put in the course of transmission to the interested parties by the Authorised Officer.

(5) The Authorised Officer shall provide opportunity to the industrial user of the goods under investigation and to representative consumer organisations in cases where the goods is commonly sold at retail level to furnish information which is relevant to the investigation including *inter alia*, their views if imposition of safeguard quantitative restrictions is in public interest or not.

(6) The Authorised Officer 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 Authorised Officer only when it is subsequently submitted in writing.

(7) The Authorised Officer shall make available the evidence presented to it by one interested party to all 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 a reasonable period or significantly impedes the investigation, the Authorised Officer may record its findings on the basis of the facts available and make such recommendations to the Central Government as it deems fit under such circumstances.

7. Confidential information. (1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, and sub-rule (5) of rule 9, 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 Authorised Officer and not be disclosed without specific authorisation of the party providing such information.

(2) The Authorised Officer 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 Authorised Officer a statement of reasons why summarisation of such information is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the Authorised Officer 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, it may disregard such information unless it is demonstrated to its satisfaction from appropriate sources that such information is correct.

8. Determination of serious injury or threat of serious injury. The Authorised Officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, *inter alia*, the following principles, namely:

- (a) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Authorised Officer 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 goods 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 to 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 goods concerned and serious injury or threat thereof:

Provided that 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 Authorised Officer may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.

9. Final findings. (1) The Authorised Officer 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, as a result of unforeseen developments the increased imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a causal link exists between the increased imports and serious injury or threat of serious injury and recommend:

- (i) the extent and nature of quantitative restrictions which, if imposed, would be adequate to prevent or remedy 'serious injury' and to facilitate positive adjustment, as the case may be;
 - (ii) the extent of quantitative restrictions so that the quantity of imports is not reduced to the quantity of imports below the level of a recent period which shall be the average of import in the last three representative years for which statistics are available and justification if a different level is necessary to prevent or remedy serious injury;
 - (iii) the quota to be allocated among the supplying countries, and the allocation of shares in the quota for such specified countries which have a substantial interest in supplying the goods;
 - (iv) the duration of imposition of quantitative restrictions and where the duration of imposition of quantitative restrictions is more than one year, the progressive liberalisation adequate to facilitate positive adjustment.
- (2) The final findings if affirmative shall contain all information on the matter of facts and law and reasons which have led to the conclusion.
- (3) The Authorised Officer shall issue a public notice recording his final findings.

(4) The Authorised Officer shall send a copy of the public notice regarding his final findings to the Central Government in the Ministry of Commerce and Industry and a copy thereof to the interested parties.

10. Imposition of safeguard quantitative restrictions. The Central Government may based on the recommendation of the Authorised Officer, by a notification in the Official Gazette, under sub-section (I) of section 9A of the Act, impose upon importation into India of the goods covered under the final determination, a safeguard quantitative restrictions not exceeding the amount or quantity which has been found adequate to prevent or remedy serious injury and to facilitate adjustment.

11. Imposition of safeguard quantitative restrictions on non-discriminatory basis. Any safeguard quantitative restrictions imposed on goods under these rules shall be applied on a non-discriminatory basis to all imports of the goods irrespective of its source.

12. Date of commencement of safeguard quantitative restrictions. The safeguard quantitative restrictions levied under these rules shall take effect from the date of publication of the notification in the Official Gazette, imposing such quantitative restrictions.

13. Duration. (1) The safeguard quantitative restrictions imposed under rule 10 shall be 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 quantitative restrictions imposed under rule 10 shall, unless revoked earlier, cease to have effect on the expiry of four 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 serious injury or threat thereof and it is necessary that the safeguard quantitative restrictions should continue to be imposed, to prevent such serious injury or threat and to facilitate adjustments, it may extend the period beyond four years:

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

14. Liberalization of safeguard quantitative restrictions. -- If the duration of the safeguard quantitative restrictions imposed under rule 10 exceeds one year, the restriction shall be progressively liberalised at regular intervals during the period of its imposition.

15. Review. (1) The Authorised Officer shall, from time to time, review the need for continued imposition of the safeguard quantitative restrictions and shall, if, it is satisfied on the basis of information received that:

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

Provided that where the period of imposition of safeguard quantitative restrictions exceeds three years, the Authorised Officer shall review the situation not later than the midterm of such imposition, and, if appropriate, recommend for withdrawal of such safeguard quantitative restrictions or for the increase of the liberalisation of quantitative restrictions.

(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 5, 6, 7 and 9 shall, *mutatis mutandis*, apply in the case of review under this rule.

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ANUP K. PUJARI, Director General of Foreign Trade
E-mail: dgft@nic.in
