Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997

[Notification No. 35/97-Cus. (N.T.), dated 29-7-1997.]

In exercise of the powers conferred by sub-section (5) of section 8B of the Customs Tariff Act, 1975 (51 of 1975) the Central Government hereby makes the following rules, namely :-

1. Short title and commencement.-

(i) These rules may be called the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

(ii) They shall come into force on the date of their publication in the Official gazette.

2. Definitions. -

In these rules, unless the context otherwise requires, -

(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975);

(b) "Critical circumstances" means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause serious injury to the domestic industry and delay in imposition of provisional safe- guard duty would cause irreparable damage to the domestic industry;

(c) "increased quantity" includes increase in imports whether in absolute terms or relative to domestic production;

(d) "Interested Party" includes -

(i) any exporter or foreign producer or the importer of an article subjected to investigation for purposes of imposition of safeguard duty or a trade or business association, majority of the members of which are producers, exporter or importers of such an article;

(ii) the government of the exporting country; and

(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) "like article" means an article which is identical or alike in all respects to the article under investigation;

(f) "Provisional Duty" means a safeguard duty imposed under sub-section (2) of section 8B of the Act;

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

(h) all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. Appointment of Director General (Safeguard).-

(1) The Central Government may, by notification in the official Gazette appoint an officer not below the rank of a Joint Secretary to the Government of India or such other officer as it may think fit as the Director General (Safeguard) hereinafter referred to as the Director General for the purposes of these rules.

(2) The Central Government may provide to the Director General the services of such other persons and such other facilities at it deems fit.

4. Duties of the Director General.-

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

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

(2) to identify the article liable for safeguard duty;

(3) 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 an article from the specified country;

(4) to recommend, -

(i) the amount of duty which if levied would be adequate to remove the injury or threat of injury to the domestic industry;

(ii) the duration of levy of safeguard duty and where the period so recommended is more than a year, to recommend progressive liberalisation adequate to facilitate positive adjustment.

(5) to review the need for continuance of safeguard duty.

5. 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 the import of an article in such increased quantities, absolute or relative to domestic production.

(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, -

(a) evidence of, -

(i) increased imports;

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

(iii) a causal link between imports and the alleged serious injury or threat of serious injury; and

(b) 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 -

(a) increased imports;

(b) serious injury or threat of serious injury; and

(c) a causal link between increased imports and alleged injury or threat of serious injury.

(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 (a), clause (b) and clause (c) of sub-rule (3).

6. 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, issue a public notice notifying his decision thereto. The public notice shall *inter alia*, contain adequate information on the following, namely :-

(i) the name of the exporting countries and 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 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.

(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 governments of the exporting countries concerned and other interested parties.

(3) The Director General shall also provide a copy of the application referred to in sub-rule (1) of rule 5 to -

(i) the known exporters, or the concerned trade association;

(ii) the governments of the exporting countries; 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 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.

(5) 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.

(6) 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.

(7) The Director General shall make available the evidence presented to him by one interested party to the 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 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.

7. Confidential information. -

(1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, sub-rule (2) of rule 9 and sub-rule (5) of rule 11, 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 generalised or summary form, he may disregard such information unless it is demonstrated to his satisfaction from appropriate sources that such information is correct.

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, *inter alia,* the principles laid down in Annex to these rules.

9. Preliminary findings. -

(1) The Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary findings 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.

10. Levy of provisional duty. -

The Central Government may in accordance with the provisions of sub-section (2) of section 8B of the Act, impose a provisional duty on the basis of the preliminary findings of the Director General :

Provided that such duty shall remain in force only for a period not exceeding two hundred days from the date on which it was imposed.

11. Final findings. -

(1) The Director General shall, within 8 months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, -

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

(b) a causal link exists between the increased imports and serious injury or threat of serious injury.

(2) The Director General shall also give its recommendation regarding amount of duty which, if levied, 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 levy of duty :

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.

12. Levy of duty. -

(1) The Central Government may, impose by a notification in the Official Gazette, upon importation into India of the product covered under the final finding, a safeguard duty not exceeding the amount which has been found adequate to prevent or remedy serious injury and to facilitate positive adjustment.

(2) If the final finding of the Director General is negative, that is contrary to the *prima facie* evidence on whose basis the investigation was initiated, the Central Government shall within thirty days of the publication of final findings by the Director General under rule 11, withdraw the provisional duty imposed, if any.

13. Imposition of duty on non-discriminatory basis. -

Any safeguard duty imposed under rule 10 or rule 12 shall be on a non-discriminatory basis and applicable to all imports of such article, irrespective of its source.

14. Date of commencement of duty. -

(1) The Safeguard duty levied under rule 10 or rule 12 shall take effect from the date of publication of the notification, in the Official Gazette imposing such duty.

(2) Notwithstanding anything contained in sub-rule (1), where a provisional duty has been levied and where the Director General has recorded a finding that increased imports have caused or threaten to cause serious injury to domestic industry, it shall be specified in the notification under sub-rule (1) that such safeguard duty shall take effect from the date of levy of provisional duty.

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15. Refund of duty. -

If the safeguard duty imposed after the conclusions of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

16. Duration. -

(1) The duty levied 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 duty levied under rule 12 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 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 :

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

17. Liberalization of duty. -

If the duration of the duty levied under rule 12 exceeds one year, the duty shall be progressively liberalized at regular intervals during the period of its imposition.

18. Review. -

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

(i) safeguard duty 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 duty;

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

Provided that where the period of imposition of safeguard duty exceeds three years 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 duty or for the increase of the liberalisation of duty.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 8 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 11 shall *mutatis mutandis* apply in the case of review.

ANNEXURE

(*See* Rule 8)

(1) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a 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 utilization, profits and losses, and employment.

(2) The determination referred to in paragraph (1) 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. 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. In such a cases, the Director General may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.

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