[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)

(Central Board of Excise and Customs)

NOTIFICATION

New Delhi, the 4th August, 2017

No. 77/2017 - Customs (N.T.)

G.S.R._____(E)**.-** In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975) read with sub-section (1) of section 25 and section 156 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules namely:-

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1. Short title and commencement.-

(1) These rules may be called the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017.

(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 or directly competitive goods operating in the territory of India; or

(ii) whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(c) "increased imports" includes increase in imports from the Republic of Korea whether in absolute terms or relative to domestic production;

(d) "interested party" includes, -

(i) any exporter or producer from the Republic of Korea or importer of the good subjected to investigation for purposes of taking bilateral safeguard measure or a trade or business association, majority of the members of which are producers, exporters or importers of such a good;

(ii) the Government of the Republic of Korea; and

(iii) a producer of the like good or directly competitive good in India or a trade or business association, a majority of members of which produce or trade the like good or directly competitive good in India;

(e) "originating good" means a good which qualifies as an originating good under the provisions of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009 notified vide notification of the Government of India, Ministry of Finance, Department of Revenue, No. 187/2009 - Customs (N.T.), dated 31st December, 2009, published vide number G.S.R. 936(E), dated the 31st December, 2009;

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

(g) "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

(h) "Trade Agreement" means the Comprehensive Economic Partnership Agreement between the Republic of India and the Republic of Korea.

(2) Words and expressions used herein and not defined, but defined in the Customs Tariff Act, 1975 (51 of 1975) and the Customs Act, 1962 (52 of 1962) shall have the meanings respectively assigned to them in those Acts.

3. Duties of the Director General.- It shall be the duty of the Director General,-

(a) to investigate whether increased imports of an originating good into India, as a result of reduction or elimination of a customs duty in terms of the Trade Agreement, have caused or are threatening to cause serious injury to a domestic industry;

(b) to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment;

(c) to submit his findings, provisional or otherwise, to the Central Government as to the serious injury or threat of serious injury to domestic industry caused by imports of an originating good into India as a result of the reduction or elimination of a customs duty under the Trade Agreement;

(d) to recommend bilateral safeguard measure which if adopted would be adequate to prevent or remedy serious injury;

(e) to recommend the duration of the bilateral safeguard measure; and

(f) to review the need for continuation of a bilateral safeguard measure.

4. Initiation of investigation.- (1)The Director General shall, on receipt of a written application by or on behalf of the domestic producer of like good or directly competitive good, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by the increased imports of an originating good as a result of the reduction or elimination of customs duty under the Trade Agreement.

(2) An application under sub-rule (1) shall be supported by:-

(a) evidence of -

(i) increased imports of the originating good;

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

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

(iv) the reduction or elimination of a customs duty under the Agreement being a cause which contributes significantly to the increase in imports of the originating good and such imports alone constitutes a substantial cause of serious injury or threat thereof to domestic industry:

Provided that the cause of reduction or elimination of a

customs duty under the Agreement need not be equal to or greater than any other cause:

Provided further that the passage of a period of time between the commencement or termination of the reduction or elimination of a customs duty provided for under the Trade Agreement and the increase in imports shall not by itself preclude the determination that an originating good is being imported as a result of such reduction or elimination; and

(b) a statement on the efforts being taken, or planned to be taken, or both, to make an 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 of the originating good;

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

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

(d) the reduction or elimination of a customs duty under the Trade Agreement being a cause which contributes significantly to the increase in imports of the originating good and such increase in imports alone constitutes a substantial cause of serious injury to domestic industry:

Provided that the cause of reduction or elimination of a customs duty under the Trade Agreement need not be equal to or greater than any other cause.

(4) Notwithstanding anything contained in sub-rule (1), the Director General may initiate an investigation suo moto if he is satisfied with the information received from any Principal Commissioner of Customs or 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), clause (c) and clause (d) 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 imports of an originating good into India as a result of the reduction or elimination of a customs duty in terms of the Trade Agreement, issue a public notice, notifying the decision thereto and such public notice shall, inter alia, contain adequate information on the

following, namely:-

(a) precise description of the good subject to investigation;

(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 providing their views through appropriate representation.

(2) The Director General shall forward a copy of the public notice to -

(a) the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, as deemed fit by the Director General;

(b) the concerned trade associations or the known exporters of the originating good, the increased imports of which have been alleged to cause or threaten to cause serious injury to the domestic industry;

(c) the Government of the Republic of Korea; and

(d) any other interested parties, as deemed fit by the Director General.

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

(a) the Central Government in the Ministry of Commerce and Industry;

(b) the concerned trade associations or the known exporters of the originating good, the increased imports of which have been alleged to cause or threaten to cause serious injury to the domestic industry; and

(c) the Government of the Republic of Korea; and

(d) to any other interested party upon request in writing.

(4) The Director General may issue a notice, calling for any information in such form as may be specified in the notice from the exporters, producers and the Government of the Republic of Korea and such information shall be furnished by such persons and the Government of the Republic of Korea 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.

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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 Government of the Republic of Korea.

(5) The Director General may also provide opportunity to the industrial users of the originating good under investigation and to representative consumer organisations in cases where the originating good 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, within the time frame prescribed by the Director General.

(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 the period specified by the Director General or significantly impedes the investigation, the Director General may record the 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 (7) 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, the same 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.

7. 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 following principles, namely:-

(a) 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 originating good in absolute and relative terms, the share of the domestic market taken by increased imports of the originating good, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment; and

(b) the determination under this rule 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 originating good and serious injury or threat thereof and when factors other than increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports of the originating goods.

8. Preliminary findings.- (1) The Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, where there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry and where delay in imposition of provisional bilateral safeguard measure would cause damage to the domestic industry which would be difficult to repair, may record a preliminary finding regarding serious injury or threat of serious injury to the domestic industry as a result of increased imports of an originating good.

(2) The Director General shall issue a public notice regarding such preliminary findings and send a copy of the public notice to, -

(a) the Central Government in the Ministry of Commerce and Industry and in the Ministry of Finance;

(b) the Government of the Republic of Korea.

9. Application of provisional bilateral safeguard measure.- (1) The Central Government, on the basis of the preliminary findings of the Director General, may -

(a) suspend further reduction of any rate of customs duty on the originating good provided for under the Trade Agreement; or

(b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

(i) the Most Favoured Nation applied rate of customs duty on the originating good in effect at the time when the bilateral safeguard measure is taken; and

(ii) the Most Favoured Nation applied rate of customs duty on the originating good in effect on the day immediately preceding the date of entry into force of the Trade Agreement.

(2) The bilateral safeguard measure under sub-rule (1) shall remain in force only for a period not exceeding two hundred days from the date of its imposition.

10. Final findings.- (1) The Director General shall, within eight months from the date of initiation of the investigation, or within an extended period not exceeding one year from the date of initiation of the investigation, as the Central Government may allow, determine whether, -

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

(b) a causal link exists between the increased imports of the originating good due to the reduction or elimination of a custom duty under the Trade Agreement and serious injury or threat of serious injury.

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(2) The Director General shall also give his recommendation regarding bilateral safeguard measure which would be adequate to prevent or remedy serious injury and to facilitate adjustment.

(3) The Director General shall also make his recommendations regarding the duration of the bilateral safeguard measure:

Provided that where the period recommended is more than one year, the Director General may also recommend progressive liberalisation of the bilateral safeguard measure at regular intervals during the period of application, adequate to facilitate 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 notify the final findings.

(6) The Director General shall send a copy of such notification of final findings to -

(a) the Central Government in the Ministry of Commerce and Industry and in the Ministry of Finance;

(b) the Government of the Republic of Korea.

11. Application of bilateral safeguard measure.- (1) On receipt of the recommendation of the Director General, in order to prevent or remedy serious injury and to facilitate adjustment in respect of the originating good covered under the final findings, the Central Government may suitably amend the notification, issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) to give effect to the provisions of the Trade Agreement, so as to -

(a) suspend further reduction of any rate of customs duty on the originating good provided for under the Trade Agreement; or

(b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

(i) the Most Favoured Nation applied rate of customs duty on the originating good in effect at the time when the bilateral safeguard measure is taken; and

(ii) the Most Favoured Nation applied rate of customs duty on the originating good in effect on the day immediately preceding the date of entry into force of the Trade Agreement.

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(2) No bilateral safeguard measure under these rules may be imposed in respect of a good on which action under sub-section (1) of section 8B of the Customs Tariff Act, 1975 (51 of 1975) is in place and in the event of a safeguard measure being imposed in respect of a good under sub-section (1) section 8B of the Customs Tariff Act, 1975 (51 of 1975), any existing bilateral safeguard measure which has been imposed under these rules in respect of that good shall be terminated prior to the imposition of the action to be applied pursuant to sub-section (1) of section 8B of the Customs Tariff Act, 1975 (51 of 1975).

(3) In case, the final finding of the Director General is contrary to the prima facie evidence on whose basis the investigation was initiated and the final finding does not have recommendation for applying bilateral safeguard measure, the Central Government shall within thirty days of the publication of final findings by the Director General under rule 10, withdraw the provisional bilateral safeguard measure imposed, if any.

(4) Upon termination of the bilateral safeguard measure, whether provisional or final, the rate of customs duty for an originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

12. Date of commencement of bilateral safeguard measure.- (1) The

bilateral Safeguard measure under Rule 9 and Rule 11 shall come into effect from the date of publication of the notification, in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1), where a provisional bilateral safeguard measure has been imposed 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 issued under rule 11 that such bilateral safeguard measure shall take effect from the date of notification imposing the provisional bilateral safeguard measure.

13. Refund of duty.- If the bilateral safeguard measure taken after the conclusion of the investigation results in a rate of duty which is lower than the rate of duty resulting from a provisional bilateral safeguard measure already taken, the differential duty collected shall be refunded to the importer.

14. Transition period.- The right to apply a bilateral safeguard measure on a originating good shall be within the transition period for that originating good which shall begin from the date of entry into force of the Trade Agreement till ten years from the date of completion of tariff elimination or completion of tariff reduction, as the case may be for that originating good.

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15. Duration.- (1) The suspension of the concessions granted under the provisions of the Trade Agreement or the bilateral safeguard measure applied under rule 11 shall be only to the extent and 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) the bilateral safeguard measure applied under rule 11 shall not exceed a period of two years from the date of its imposition:

Provided that in exceptional circumstances, the Central Government may extend the period of bilateral safeguard imposition, on receipt of the recommendation of the Director General under sub-rule (1) of rule 17:

Provided further that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed four years.

(3) No bilateral safeguard measure under these rules shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

16. Liberalisation of bilateral safeguard measure.- If the duration of the application of bilateral safeguard measure under rule 11 is more than one year, the bilateral safeguard measure may be progressively liberalised during the period of its

imposition.

17. Review.- (1)The Director General may review the need for continued application of the bilateral safeguard measure and, if he is satisfied on the basis of information received by him that –

(a) the bilateral 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 bilateral safeguard measure;

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

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

[**F.No. 528/41/2013-STO(TU)**]

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(Satyajit Mohanty)
Director