

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

শনিবার, জানুয়ারি ২৮, ২০১২

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়

লেজিসলেটিভ ও সংসদ বিষয়ক বিভাগ

প্রজ্ঞাপন

তারিখ, ১৭ জানুয়ারি ২০১২ ইং

নং ০৫ (আঃম) (লেঃস)(মুঃপ্রঃ)-আইন-অনুবাদ-২০১২—সরকারি কার্যবিধিমালা, ১৯৯৬ এর প্রথম তফসিল (বিভিন্ন মন্ত্রণালয় এবং বিভাগের মধ্যে কার্যবন্টন) এর আইটেম ৩০ এর ক্রমিক ৭ ও ১০ এবং মন্ত্রিপরিষদ বিভাগের বিগত ৩-৭-২০০০ ইং তারিখের সভায় গৃহীত সিদ্ধান্ত বাস্তবায়নের নিমিত্ত Safeguard Duty Rules, 2010 নিম্নরূপ ইংরেজী অনুবাদ সর্বসাধারণের জ্ঞাতার্থে প্রকাশ করিল।

মোঃ আনোয়ার হোসেন
সিনিয়র সহকারী সচিব।

Government of the People's Republic of Bangladesh**Ministry of Finance****Internal Resources Division****Dhaka****(Customs)****Notification**

Date, 24 Jaistha, B.S. 1417/7 June, 2010 A.D.

ইস্যু নং-৫

S.R.O. No. 163-Law/2010/2286/Customs,—In exercise of the powers conferred by sub-section (5) of section 18E of the Customs Act, 1969 (Act IV of 1969) the Government is pleased to make the following rules, namely :—

1. Short title.—These rules may be called the Safeguard Duty Rules, 2010.

2. Definitions.—In these rules, unless there is anything repugnant in the subject or context,—

- (1) **“like article”** means an article which is identical to or alike in all respects to the article under enquiry;
- (2) **“Act”** means the Customs Act, 1969 (Act IV of 1969).
- (3) **“interested party”** means—
 - (a) for the purpose of imposition of safeguard duty, any exporter or foreign producer of importer of an article under enquiry or a trade or business association, of which most of the members are producers, exporters or importers of the said article;
 - (b) the Government of the exporting country; and
 - (c) manufacturers of the like article or manufacturers of the directly competitive article in Bangladesh;
- (4) **“Authority”** means Safeguard Authority designated under rule 3;
- (5) **“enquiry”** means an enquiry conducted under these rules, for the purpose of section 18E of the Act;

- (6) “**directly competitive article**” means an article which is a substitute of the article under enquiry;
- (7) “**increased quantity**” means increase in imports whether in absolute terms or relating to domestic production;
- (8) “**critical circumstances**” means circumstances in which there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry that produces like article or directly competitive articles and delay in imposition of provisional safeguard duty would cause damage to the domestic industry, which would be difficult to repair;
- (9) “**provisional duty**” means a provisional safeguard duty imposed under section 18E (2) of the Act;
- (10) “**domestic industry**” means the producers who—
- (a) produces as a whole of the like article or a directly competitive article in Bangladesh; or
 - (b) collectively produces the major share of the total domestic production of the like article or a directly competitive article in Bangladesh;
- (11) “**serious injury**” means an injury causing a significant overall impairment in the position of a domestic industry;
- (12) “**threat of serious injury**” means a clear and imminent danger of serious injury.

3. **Safeguard Authority.**—(1) For the purpose of these rules, the Chairman of Bangladesh Tariff Commission shall act as the Safeguard Authority of Bangladesh to conduct enquiry and give findings on any application for safeguard measures.

(2) The government shall provide to the Authority the services of such other persons and such other facilities as he deems fit.

4. **Duties of the Authority.**—Subject to the provisions of these rules, the Authority shall have the following duties, namely :—

- (a) to identify the article liable for safeguard duty;

- (b) to make enquiry of the existence of serious injury or threat of serious injury to domestic industry in consequence of increased import of an article into Bangladesh;
- (c) to submit its findings, provisional or otherwise, to the Government as to the serious injury or threat of serious injury to the domestic industry in consequence of increased import of an article from a specified country;
- (d) to recommend on the following matters, namely :—
 - (i) the amount of duty, to be imposed for removing the serious injury or threat serious injury to the domestic industry;
 - (ii) the duration of levy of safeguard duty and, where the period of such duty is recommended more than one year, to a time-limit for progressive liberalization adequate to facilitate positive adjustment;
- (e) to review the necessity of continuance of safeguard duty.

5. Initiation of enquiry.—(1) The Authority shall, on receipt of a written application from or on behalf of the domestic producer of a like article or directly competitive article, initiate an enquiry to determine the existence of serious injury or threat of serious injury to the domestic industry in consequence of the increased import of an article in quantities absolute or relative to domestic production through changes in the level of sale, production, productivity, capacity utilization, profit and losses and employment.

(2) An application under sub-rule (1) shall be in such form as may be specified by the Authority and supported by evidence of the following, namely :—

- (a) increased imports;
- (b) serious injury or threat of serious injury to the domestic industry;
- (c) a casual link between imports and the alleged serious injury or threat of serious injury; and
- (d) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment with import competition.

(3) The Authority shall not initiate an enquiry on the basis of an application made under sub-rule (1) and (2), unless he, upon examination of the accuracy and adequacy of the evidence provided in or with the application, is satisfied that there is sufficient evidence of the following matters, namely:—

- (a) Increased import;
- (b) Serious injury or threat of serious injury; and
- (c) a casual link between imports and the alleged serious injury or threat of serious injury.

(4) Notwithstanding anything contained in sub-rule (2), the Authority may initiate an enquiry suo moto if it is satisfied with the information received from any Commissioner of Customs appointed under the Act or any other source that sufficient evidence exists as referred to in clauses (a), (b) and (c) of sub-rule (3).

6. Principles governing enquiry.—(1) The Authority shall, after deciding to initiate an enquiry for determining the serious injury or threat of serious injury to domestic industry in consequence of the increased import of an article into Bangladesh, issue a public notice which shall, inter alia, contain adequate information about the following matters, namely:—

- (a) the names of the article involved and the countries exporting it;
- (b) the date of initiation of the enquiry;
- (c) a summary of statement of the facts in which the allegation of serious injury or threat of serious injury is based;
- (d) reasons for initiation of enquiry;
- (e) the addresses to which representations by interested parties should be directed; and
- (f) the time-limit for presenting and sending the views of interested parties.

(2) A copy of the public notice shall be forwarded by the Authority to the Ministry of Commerce, the Ministry of Industries and the National Board of Revenue under the Internal Resources Division and, if it is required for the case to the Ministry of Agriculture, and to the known exporters of the article, the

increased import of which has been alleged to have caused or threatened to cause serious injury to the domestic industry, to the Governments of the exporting countries concerned and other interested parties including the Committee on Safeguards of the World Trade Organization.

(3) The Authority shall provide a copy of the application referred to in sub-rule (1) of the rule 5 to the following cases and places, namely:—

- (a) the known exporters or the concerned traders association;
- (b) the Governments of the exporting countries; and
- (c) the Ministry of Commerce:

Provided that, the Authority shall upon request in writing, also make available a copy of the application to other interested parties.

(4) The Authority may issue a notice calling for any information in such form as may be specified by it from the exporters, foreign producers and the Governments of interested countries and such information shall be furnished by such persons and Government within thirty days from the date of receipt of the notice or within such extended period as the Authority may allow on sufficient ground having been shown.

Explanation.—For the purpose to these rules, the public notice and other documents shall be deemed to have been received within ten working days after the date on which these documents were sent by the Chairman by registered post or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The Authority shall, also provide an opportunity to the industrial users of the article under enquiry and to the representatives of consumer organizations in cases where the article is commonly sold at the retail level to furnish information in writing which is relevant to the enquiry.

(6) The Authority may allow an interested party or its representative to present the information relevant to enquiry orally but the Authority shall take such oral information into consideration only when it is subsequently submitted in writing within one week.

(7) The Authority shall make the evidence presented to him by an interested party available to the other parties participating in the enquiry.

(8) In the case where an interested party, by refusing access to or otherwise without providing necessary information within a reasonable period of time, significantly impedes the enquiry, the Authority may, recording his findings in writing on the basis of the facts available to him, make such recommendations to the Government as it deems fit.

7. Confidential information.—(1) Notwithstanding anything contained in the sub-rules (1), (3) and (7) of rule 6, sub-rule (2) of rule 9, and sub-rule (5) of rule 11, the Authority shall ensure the confidentiality of the information which is by nature confidential or which is provided as confidential by any party showing adequate cause of it and shall not disclose it without the consent of the party providing such information.

(2) The Authority may, if necessary, require the parties providing information on a confidential basis to furnish non-confidential summary thereof, and if the party providing such information thinks that such information cannot be summarized, the party may submit to the Authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the Authority 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 authorize its disclosure in a generalized 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 Authority shall in determination of serious injury or threat of serious injury to the domestic industry take into account, inter alia, the principles laid down in the rule 6.

9. Preliminary enquiry report.—(1) The Authority shall proceed expeditiously with the enquiry and, in critical circumstances, make preliminary enquiry regarding serious injury or threat of serious injury.

(2) The Authority shall issue a public notice regarding his preliminary report and send a copy of the notice to the Ministry of Commerce and to the National Board of Revenue.

10. Levy of provisional duty.—A provisional duty may be imposed under the provisions of section 18E (2) of the Act on the basis of the preliminary enquiry reports of the Authority:

Provided that, such duty—

- (a) shall be imposed after notifying the Committee on Safeguards of the World Trade Organization, and
- (b) shall remain in force only for a period not exceeding two hundred days from the date on which it is imposed.

11. Final report.—(1) The Authority shall, within eight months from the date of initiation of the enquiry or within such extended period as the Government may allow, determine whether—

- (a) the increased imports of the article under enquiry 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 Authority shall also make recommendation regarding amount and duration of duty to be imposed, which shall facilitate to prevent or redress serious injury and positive adjustment:

Provided that where the period recommended is more than one year, the Authority shall also recommend a time-limit for progressive liberalization to facilitate positive adjustment.

(3) If the final enquiry report is positive, it shall contain all information on the matter of facts and the provisions of the relevant Act and reasons which have led to the conclusion.

(4) The Authority shall issue a public notice recording his final enquiry report in writing and send a copy to the notice conveying the final enquiry report to the Ministry of Commerce and to the National Board of Revenue and other parties involved.

12. Imposition of safeguard duty.—(1) A safeguard duty, under section 18E of this Act may be imposed on the article covered by the final enquiry report under rule 11, upon its importation into Bangladesh, but it shall not exceed the amount which has been found adequate to prevent or remove serious injury and to facilitate positive adjustment.

(2) If the final enquiry report of the Authority is negative, that is contrary to the prima facie evidence on the basis of which the enquiry was initiated, the provisional duty imposed under rule 10 shall be withdrawn within thirty days of the publication of final enquiry report.

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

Provided that safeguard duty shall not be imposed on an article originating in a developing country, if—

- (a) the share of imports of the concerned article from the said country is less than three percent of the total import of the concerned article in Bangladesh; and
- (b) The import of the developing country members associated individually with less than three percent import does not exceed nine percent of total import of the article concerned.

14. Date of commencement of safeguard duty.—(1) The safeguard duty imposed under rule 10 or rule 12 shall take effect from the date of publication of the notification in the official Gazette in this behalf.

(2) Notwithstanding anything contained in sub-rule (1), where a provisional duty has been imposed and where the Authority has recorded a finding that increased imports have caused or threatened 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 imposition of provisional duty.

15. **Refund of duty.**—If the safeguard duty imposed after the conclusion of the differential enquiry is lower than the provisional duty already imposed and collected, the duties shall be refunded to the importer, subject to the provisions of section 18E (2) of the Act.

16. **Duration of safeguard.**—(1) The duty imposed under rule 12 shall be only for such period of time as may be necessary to prevent or redress serious injury and to facilitate positive adjustment:

Provided that, the period for imposing safeguard duty, so recommended, in no case, shall exceed four years, and these four years shall include the period of any provisional duty imposed earlier under rule 10.

(2) The period of safeguard duty may further be extended by another four years in manners set forth in rules 6 and 7 if the situation satisfies the requirements of rules 5 and 8 and imposing such safeguard duty may be further extended by another two years in manners and under conditions set forth in rules 5, 6, 7 and 8.

17. **Liberalization of duty.**—If the duration of the duty imposed 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 Authority shall, from time to time, review the need for continued imposition of the safeguard duty and if it, on the basis of information received, is satisfied that;

- (a) safeguard duty is indispensable to prevent or remove serious injury and there is evidence that the domestic industry is adjusting positively, it may recommend to the Government for the continued imposition of duty;
- (b) there is no justification for the continued imposition of such duty, it may recommend to the Government for its withdrawal:

Provided that, where the period of imposition of safeguard duty exceeds three years, the Authority shall review the situation not later than the mid-term of such imposition and, if appropriate, shall recommend for withdrawal of such safeguard duty or for further liberalization of duty.

(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 Government may allow.

(3) The provisions of rules 5, 6, 7 and 11 shall, mutatis mutandis, apply in the case of review.

19. Publication of Authentic English Text.—(1) After the commencement of these rules, the Government shall, by notification in the official Gazette publish a text of these rules in English to be called the Authentic English Text of these rules.

(2) In the event of conflict between these rules and the Authentic English Text, these rules shall prevail.

By order of the President

Dr. Nasiruddin Ahmed
Secretary.