

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

UNION OF INDIA

India

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

Rule

CUSTOMS-TARIFF-IDENTIFICATION-AND-ASSESSMENT-OF-SAFEGUARD MEASURES RULES, 1997

- Published on 29 July 1997
- Commenced on 29 July 1997
- [This is the version of this document from 29 July 1997.]
- [Note: The original publication document is not available and this content could not be verified.]

Customs Tariff (Identification and Assessment of Safeguard Measures) Rules, 1997Published vide M.F. (D.R.) Notification No. 35/67-Cus. (N.T.), dated 29th July, 1997Last Updated 3rd February, 2021M.F. (D.R.) Notification No. 35/67-Cus. (N.T.), dated 29th July, 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 Measures) Rules, 1997. [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]
- (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 safeguard [Measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [Measures] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 measure" means provisional safeguard measure imposed under sub- section (5) of section 8B of the Act;] [Substituted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).](fa)["safeguard measure" means safeguard duty, or a tariff rate quota or such other measures imposed under sub-section (1) of section 8B of the Act;] [Inserted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).](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;(ga)["WTO" means the World Trade Organisation;] [Inserted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).](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 ([Trade Remedies] [Substituted 'Safeguard' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]).

(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 ([Trade Remedies] [Substituted 'Safeguard' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]) 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 [Measures] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).];(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 [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] and where the period so recommended is more than a year, to recommend progressive

liberalisation adequate to facilitate [***] [Omitted 'positive' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] adjustment.(5)to review the need for continuance of safeguard [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).].

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 [***] [Omitted 'positive' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [Principal Commissioner of Customs or Commissioner of Customs, as the case may be,] [Substituted 'Commissioner of Customs' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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, article involved and volume of imports.] [Substituted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]
 (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-rule (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. [Substituted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]

- The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account the following principles, namely: - (i) in the investigation to determine

whether increased imports have caused or threatening to cause serious injury to the 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 utilisation, profits and losses, and employment;(ii)the determination referred to in clause (i) 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 and 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 Director General may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.]

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 (5)] [Substituted 'sub-section (2)' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] of Section 8B of the Act, impose a provisional [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] on the basis of the preliminary findings of the Director General :Provided that such [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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)[(a) The Director General shall also give recommendations regarding the extent of measure which, if levied, would be adequate to prevent or remedy serious injury and to facilitate adjustment;(b)the level of tariff rate quota, if imposed as a measure, may be determined having regard to the following conditions, namely: -(i)maintaining traditional trade flow of the article over the representative period;(ii)the existing and likely demand supply scenario in the country; and(iii)any other condition that may be considered relevant:Provided that the tariff rate quota applied shall not reduce the quantity of imports below the level of the recent period, which

shall be the average of imports in the last three years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury;(c)tariff rate quota may be global or country specific;(d)specific tariff rate quota may be allocated to countries with substantial interest, considering the proportion of the share of imports of the article concerned into the country during a representative period, and having regard to all relevant factors which may have or are likely to affect the trade in the article;(e)in a case where the tariff rate quota is country specific, a residual tariff rate quota shall be provided for all other countries and in case the countries with specific tariff rate quota exhaust their specific tariff rate quotas, such countries may use the residual tariff rate quota available;(f)any unused tariff rate quota may be carried forward and added to the tariff rate quota for the subsequent period.](3)The Director General shall also make his recommendations regarding the duration of levy of [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] :Provided that where the period recommended is more than one year, the Director General shall also recommend progressive liberalisation adequate to facilitate [***] [Omitted 'positive' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).].

(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 [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] imposed, if any.

13. Imposition of [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] on non-discriminatory basis.

- Any safeguard [measure] [Substituted 'Duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] levied 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.[provided that no such measure shall be applied on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per. cent or where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than three per. cent import share taken together, does not

exceed nine per. cent of the total import of that article in India] [Inserted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).].

14. Date of commencement of [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).].

(1)The safeguard [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] levied under rule 10 or 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 [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).].

15. [Refund of duty. [Substituted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]

- If the safeguard measure imposed as a duty after the conclusion of the investigation is lower than the provisional measure in the form of a duty already imposed and collected, the differential shall be refunded to the importer.] [Substituted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]

16. Duration.

(1)The [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [***] [Omitted 'positive' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] adjustment.(2)Notwithstanding anything contained in sub-rule (1) of this rule [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] should continue to be imposed, it may extend the period of such imposition :Provide further that in no case the safeguard [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] shall continue to be imposed beyond a period of ten years from the date on which such [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] was first imposed.

17. Liberalization of [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).].

- If the duration of the [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] levied under rule 12 exceeds one year, the [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] shall be progressively liberalized at regular intervals during the period of its imposition.

18. Review.

(1)The Director shall, from time to time, review the needs for continued imposition of the safeguard [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] and shall, if he is satisfied on the basis of information received by him that, -(i)safeguard [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting [***] [Omitted 'positively' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).], it may recommend to the Central Government for the continued imposition of [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).];(ii)there is no justification for the continued imposition of such [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).], recommend to the Central Government for its withdrawal :Provided that where the period of imposition of safeguard [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 [measure] [Substituted 'duty' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] or for the increase of the liberalisation of duty.(1A)[The Director General may review the usage and implementation of the tariff rate quota for any modification.] [Inserted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).](2)Any review initiated under sub-rule (1) [or sub-rule (1A)] [Inserted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).] 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 II shall mutatis mutandis apply in the case of review.

19. [Notification and consultation. [Inserted by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]

(1)The Central Government shall notify to the WTO of all actions required under the WTO Agreement on Safeguards.(2)Before imposition of a safeguard measure, an opportunity to hold consultations with the members of the WTO having substantial interest as exporters of the product concerned, shall be provided].[***] [Omitted 'Annexure' by Notification No. G.S.R. 77(E), dated 01.2.2021 (w.e.f. 29.7.1997).]

Annexure(SeeRule 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 cases, the Director General may refer the complaint to the authority for anti-dumping or countervailing duty investigation, as appropriate.