



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

SAFEGUARD MEASURES ACT, No. 3 OF 2018

[Certified on 19th of March, 2018]

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Safeguard Measures Act, No. 3 of 2018

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AN ACT TO PROVIDE FOR THE CONDUCT OF INVESTIGATIONS AND THE APPLICATION OF SAFEGUARD MEASURES ON PRODUCTS IMPORTED INTO SRI LANKA; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS Sri Lanka was one of the original contracting parties to the General Agreement on Tariffs and Trade of 1947(GATT 1947):

Preamble.

AND WHEREAS the General Agreement on Tariffs and Trade 1994 (GATT 1994) which is based upon the text of GATT 1947 and was signed in April 1994, includes among others the Agreement on Safeguards:

AND WHEREAS it is expedient to make legislative provisions for the implementation of the Agreement on Safeguards Measures on products imported into Sri Lanka:

BE it therefore enacted by Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Safeguard Measures Act, No. 3 of 2018, shall come into operation on such date as the Minister may appoint, by the Order published in the *Gazette*.

Short title and date of operation.

2. (1)The safeguard measures may be applied on products imported into Sri Lanka, where the Director General of Commerce (hereinafter referred to as the “Director General”) determines pursuant to an investigation initiated and conducted in accordance with the provisions of this Act, that the investigated product is being imported in such increased quantities, absolute or relative to domestic production and under such conditions, so as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products, and that the application of safeguard measures is in the public interest.

Application of safeguard measures.

(2) Any decisions relating to the application, suspension or withdrawal of safeguard measures and the modification or extension of periods of application of safeguard measures shall be the responsibility of the Inter Ministerial Committee (hereinafter referred to as the “Committee”).

Constitution of
the Committee.

3. (1) The Committee shall, subject to the provisions of subsection (2), consist of the following members:-

- (a) the Secretary to the Ministry of the Minister, who shall be the Chairman of the Committee;
- (b) the Secretary to the Ministry of the Minister in charge of the subject of Finance or his nominee;
- (c) the Secretary to the Ministry of the Minister in charge of the subject of Industrial Development or his nominee;
- (d) the Secretary to the Ministry of the Minister in charge of the subject of Internal Trade or his nominee;
- (e) the Secretary to the Ministry of the Minister in charge of the subject of Agriculture or his nominee;
- (f) the Secretary to the Ministry of the Minister in charge of the subject of Foreign Affairs or his nominee;
- (g) the Director-General of Customs or his nominee;
and
- (h) a nominee of the Governor of the Central Bank of Sri Lanka.

(2) Notwithstanding the provisions of subsection (1), considering the nature of the proposal being submitted for

its consideration under this Act, and where the Chairman considers it appropriate, he may, in consultation with the members referred to in paragraphs (b) and (c) of subsection (1), co-opt not more than two other members to the Committee.

(3) The Chairman of the Committee shall, if present, preside at all meetings of such Committee, and in the absence of the Chairman from any such meeting, the members present shall nominate one of the members present to preside at such meeting.

(4) The *quorum* for any meeting of the Committee shall be four members and the procedure in regard to the conduct of meetings and the transaction of its business, shall be regulated by such Committee.

4. (1) For the purpose of this Act, a determination as to whether increased imports of the investigated product have caused a threat of serious injury or serious injury to a domestic industry, shall be based upon an evaluation of all relevant factors of an objective and quantifiable nature having a bearing on such domestic industry, and in particular, the following factors:-

Serious injury.

- (a) the rate and amount of the increase in imports of the investigated product in absolute terms and relative to domestic production of like or directly competitive products;
- (b) the share of the domestic market taken by increased imports of the investigated product;
- (c) the consequent impact on the domestic industry of the like or directly competitive products, evidenced by changes in relevant economic indicators such as production, capacity utilization, inventories, sales, prices (such as decrease in domestic prices or lack of increase in domestic prices, which could

have otherwise occurred in the absence of increased imports), productivity, profits and losses, return on investments, cash flow and employment; and

- (d) any other relevant factors other than increased imports of the investigated product which also are causing or threatening to cause serious injury to the domestic industry, though such injury shall not be attributed to the increased imports.

(2) A determination of threat of serious injury or serious injury shall be based on objective evidence that demonstrates the existence of a causal link between the increased imports of the product concerned and the alleged threat of serious injury or injury.

(3) Where factors other than increased imports causes threat of serious injury or serious injury to the domestic industry in question at the same time, such serious injury shall not be attributed to such increased imports. In such cases, the Director-General may refer the complaint for anti-dumping or countervailing duty investigations, if necessary.

Threat of serious injury.

5. A determination of a threat of serious injury caused by increased imports of the investigated product shall be based only on actual facts, and in making such a determination, in addition to the factors specified in section 4, the following shall also be taken into consideration:-

- (a) the actual and potential export capacity of the country or countries of production or origin of the investigated product;
- (b) any build-up of inventories in the country or countries of exportation;
- (c) the probability of exports of the investigated product entering the domestic market in increasing quantities; and

- (d) any other factors determined relevant by the Director-General.

6. An investigation to determine whether increased imports of the investigated product have caused or is threatening to cause serious injury to a domestic industry, shall be initiated -

Requirement of a written application.

- (a) upon a written application being made to the Director-General by or on behalf of a domestic industry; or
- (b) by the Director-General on his own behalf.

7. (1) An application made under paragraph (a) of section 6 shall provide such information as is reasonably available to the applicant on the following matters:-

Information required to be included in the application.

- (a) a complete description of the imported product including its technical characteristics and uses and an identification of its tariff classification and the duties applicable to such product;
- (b) a complete description of the domestic like or directly competitive products, including the technical characteristics and uses of such products;
- (c) the names and addresses of the enterprises making the application or the enterprises on whose behalf the application is being made (hereinafter referred to as the “requesting enterprises”) and of all other known producers of the domestic like or directly competitive products;
- (d) the percentage of domestic production of the like or directly competitive products represented by the requesting enterprises;

- (e) information on the volume and value of the imported product for each of the three calendar years preceding the date of making the application and any other recent data, by the country of origin;
- (f) a description of the increase in imports and in particular whether such increase is absolute or relative to domestic production, or both;
- (g) information relating to the serious injury or threat of serious injury to the domestic industry, for each of the three calendar years preceding the date of making the application and recent data, including-
 - (i) with respect to serious injury -
 - (A) volume and value of the domestic product;
 - (B) utilization of production capacity;
 - (C) changes in inventory levels;
 - (D) market share;
 - (E) changes in sales levels;
 - (F) level of employment and wages in the domestic industry;
 - (G) changes in price levels;
 - (H) productivity;
 - (I) profit and loss;
 - (J) return on investment;
 - (K) cash flow; and
 - (L) any other information that may relate to the existence of a serious injury;

- (ii) with respect to threat of serious injury-
 - (A) export capacity in the exporting countries;
 - (B) inventories relating to the imported product available in Sri Lanka and in the exporting countries; and
 - (C) information regarding the probability of increase in the imports including trade restrictions on exports to third country markets;
- (h) an explanation, in the light of the information contained in the application and the requirements under this Act, of the reasons why it is believed that serious injury or threat thereof exists, and is caused by increased imports;
- (i) a statement giving specific reasons for seeking an application of a safeguard measure, such as, to facilitate the orderly transfer of resources to more productive uses, to improve competitiveness or to adapt to new conditions of competition, together with the type and level of the measure considered necessary to ensure the achievement of the objectives pursued;
- (j) a plan for adjusting the domestic industry to competition from imports, in accordance with the objectives referred to in paragraph (i) ; and
- (k) if a provisional measure is sought, information regarding critical circumstances where delay in taking action would cause damage to the industry which it would be difficult to repair, and a statement indicating the level of tariff increase requested for as a provisional measure.

(2) Every application made under paragraph (a) of section 6 shall be accompanied by such fee as may be prescribed and be submitted to the Director-General together with such number of copies of the application as may be determined by the Director-General.

(3) The Director-General shall take due account of any difficulties experienced by interested parties and in particular small companies, in supplying the information requested for and provide them, through an advisory body constituted for that purpose, with practicable assistance or where appropriate, extend the time granted for the submission of any specified information, as the case may be.

(4) The Minister shall constitute an advisory body for the purpose of assisting applicants in the formulation of applications made under paragraph (a) of section 6. The composition, establishment and all other matters pertaining to such an advisory body shall be as prescribed by the Minister.

Withdrawal of application.

8. An application made under paragraph (a) of section 6 may be withdrawn prior to initiation of an investigation, and in such a case it shall be considered to have not been made.

Decision to initiate an investigation where an application is made.

9. (1) Where, after examining the accuracy and adequacy of the information provided in an application made under paragraph (a) of section 6, and being satisfied that there is sufficient evidence of serious injury or threat thereof caused by increased imports, the Director-General shall initiate an investigation. Prior to arriving at a decision to initiate an investigation, the Director-General may seek such additional information he considers necessary, including from the requesting enterprises.

(2) Where the Director-General decides not to initiate an investigation in response to an application made under paragraph (a) of section 6, he shall notify the requesting enterprise making the application or on whose behalf the application is being made of the reasons for not initiating, an investigation.

(3) Where an application has been received by the Director-General, he shall generally be required to make a decision as to whether or not to initiate a safeguard investigation within a period of thirty days of the date of receipt of the application. Where the application involved complex issues, or if Director-General has sought additional information under subsection (1) of this section, the time for arriving at a decision may be extended by a further period of fifteen days.

10. The Director-General may on his own behalf, initiate an investigation under this Act, where he has sufficient evidence available of injury being caused or threatened to be caused to the domestic industry by the increased imports of the investigation product, so as to justify the initiation of such investigation.

Director General may initiate an investigation.

11. (1) Where a decision is taken by the Director-General to initiate an investigation under this Act, the Director-General shall immediately -

Public notice regarding initiation of an investigation.

- (a) notify the requesting enterprises and all other interested parties, as well as the relevant representative of the exporting countries, of such investigation; and
- (b) publish a notice regarding the initiation of such safeguard investigation in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages.

(2) The initiation of an investigation shall be deemed to have commenced on the date of publication in the *Gazette* of the notice referred to in paragraph (b) of subsection (1).

(3) An interested party who wishes to participate in the investigation shall within a period of fifteen days of the date of initiation of the investigation, inform to the Director-General in writing of its desire to participate in the

investigation. The Director-General may, where he considers it appropriate, accept any request from an interested party to participate in an investigation after the period allowed for making submission to participate under this subsection.

(4) The Director-General shall immediately after the initiation of an investigation under this Act, notify the Committee of such investigation, in conformity with such requirements established by the Committee.

(5) Where a decision is taken by the Director-General not to initiate an investigation upon an application made under paragraph (a) of section 6, the Director General shall inform the Committee and upon the approval of the Committee, he shall cause a notice to be published in the *Gazette* containing the following information:-

- (a) the identity of the requesting enterprises and the domestic products with respect to which the initiation of an investigation is being requested for;
- (b) an identification of the imported product which is alleged to be causing serious injury or threat thereof; and
- (c) reasons for taking a decision not to initiate an investigation.

Contents of the notice regarding the investigation.

12. The notice regarding the initiation of a safeguard investigation to be published under paragraph (b) of subsection (1) of section 11, shall contain adequate information on the following matters:-

- (a) complete description of the product including its technical characteristics and uses and an identification of its tariff clarification and the duties applicable to such product;
- (b) a complete description of the domestic like or directly competitive products, including the

technical characteristics and uses of such products;

- (c) the names of the requesting enterprises, if any, and of all other known producers of the domestic like or directly competitive products;
- (d) the country or countries of origin of the investigated product;
- (e) a summary of the information on which the allegation pertaining to increase in imports of the investigated products and the serious injury or threat thereof caused by such increase in imports are based;
- (f) name, address and telephone number of the Director-General;
- (g) a statement that the date of initiation of the investigation is the date of the publication in the *Gazette* of the notice regarding the initiation of the safeguard investigation;
- (h) whether or not an application of a provisional measure will be considered; and
- (i) the proposed schedule for the conduct of the investigation, including -
 - (i) the date on or before which an interested party who wishes to participate in the investigation may inform the Director-General in writing of such fact;
 - (ii) where the application of a provisional measure is being considered, the date on or before which any written arguments or submissions may be forwarded to the Director-General;

- (iii) the date on or before which an oral hearing, if so desired, should be requested for; and
- (iv) the proposed dates for the determination of the application of a provisional safeguard measure, and where relevant, for the determination regarding serious injury or threat thereof and causation, and of any other decision regarding the application of a safeguard measure.

Duration of investigation.

13. (1) Subject to the provisions of subsection (2), it shall be the duty of the Director-General, except in special circumstances, to conduct an investigation within six months of its initiation. Where the circumstances so requires, the period of six months may be extended further by not more than two months.

(2) Where in any investigation under this Act, the application of any provisional measure is being considered, the Director-General shall make a decision relating to the application of such provisional measures, not earlier than sixty days and not later than ninety days from the date of initiation of the investigation.

Interested parties to submit evidence.

14. In the conduct of an investigation, the Director-General shall give an opportunity to all participating interested parties to the investigation to make their views known on matters being investigated, and to this end Director-General shall grant to those parties time not exceeding two weeks to-

- (a) make submissions and responses to any questions or other requests being made by the Director-General to obtain any relevant information pertaining to the investigation;
- (b) submit any evidence deemed relevant by such parties, including their views on the matter under investigation; and

- (c) express their views with regard to whether or not the application of a safeguard measure would be in the public interest.

15. (1) In the conduct of an investigation under this Act, the Director-General may request for any information considered relevant for purpose of conducting such investigation, from any customs officer, company, forwarder, other enterprise, both public and private or person, and it shall be the duty of such officer, company, forwarder or enterprise, as the case may be, to provide the information requested for within such time as may be specified by the Director-General.

Director-General's power to call for information from certain person.

(2) The Director-General may, where he considers appropriate, verify or obtain further details on information received by him under section 14 and subsection (1) of this section, and where any such verification is carried out, the Director-General shall prepare a report describing the findings of such verification and such report, excluding any confidential information obtained, shall be placed in the public file maintained under section 19.

(3) Where in an investigation -

- (a) if no hearing is requested for, any participating interested party may submit written arguments concerning any matter it considers relevant to the investigation, not later than a period of one and a half months before the date proposed for the determination regarding serious injury or threat thereof and causation; or
- (b) if a hearing is held, not later than a period of ten days before the scheduled date of the hearing, any participating interested party may submit written submissions and information concerning any matter it considers relevant to the investigation.

(4) A participating interested party shall -

- (a) where no hearing is requested for, after the expiry of the period allowed for the submission of written arguments; or
- (b) where a hearing is held, following such hearing,

have a further period not exceeding ten days to submit any further written responses to the written submissions of any other participating interested parties, or submit further written arguments in response to submissions and information presented at the hearing, as the case may be.

Confidential
information.

16. (1) The Director-General shall keep confidential all information submitted which is entitled to such treatment under subsection (2) of this section, and such information shall not be disclosed without the specific permission of the party submitting it.

(2) The Director General shall treat as confidential all information designated as confidential by the party supplying such information, which is protected from disclosure under the Right to Information Act, No. 12 of 2016.

(3) The following types of information, if designated as confidential by the person submitting such information, shall for the purpose of subsection (2) be deemed to be supplied in confidence in terms of paragraph (i) of section 5(1) of the Right to Information Act, No. 12 of 2016 -

- (a) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;
- (b) information concerning the financial condition of a company which is not publicly available; and

- (c) information concerning the costs, identification of customers, sales, inventories, shipments, amount or source of any income, profit, loss or expenditure related to the manufacture and sale of a product.

(4) A party to an investigation may seek confidential status for certain information made available to the Director-General on request being made in that behalf at the time such information is submitted, including reasons for the request for such treatment. The Director-General shall consider such requests expeditiously, and shall inform the party submitting the information, if he determines that the request for confidential treatment is not warranted.

(5) Parties to an investigation shall furnish non-confidential summaries of all information for which confidential treatment is sought, which may take the form of indexation of figures provided in the confidential version, or marked deletions in the text and which shall permit a reasonable understanding of the substance of the information submitted in confidence.

(6) In exceptional circumstances, parties may indicate that information for which confidential treatment is sought is not susceptible of summary, in which case a statement of the reasons why summarization is not possible, shall also be provided by such parties.

(7) Where the Director-General is of the view that the non-confidential summary provided under subsection (5) fails to satisfy the requirements of that subsection, the Director-General may determine that the request for confidential treatment is not warranted, and where in such instance the supplier of the information is unwilling to make the information public, the Director-General shall disregard such information, and return the information concerned to the party who submitted it, unless it is demonstrated to the satisfaction of the Director-General that the information is correct.

Written
arguments.

17. (1) All participating interested parties shall have an opportunity to submit in accordance with the provisions of this section, evidence and arguments in writing, including responses to the written or oral presentations made by other participating interested parties, and views as to whether or not the application of a safeguard measure is in the public interest.

(2) In an investigation where application of any provisional safeguard measure is being considered, any participating interested party may submit written arguments within a period of fifteen days before the date proposed for the determination of the provisional safeguard measure, with regard to any matter relevant towards arriving at such determination.

Hearings.

18. (1) The Director-General shall, upon any request made by a participating interested party, not later than a period of fifteen days after publication of the determination regarding the application of a provisional measure, under section 22 or where the application of a provisional measure is not being considered, not later than a period of one and a half month after the initiation of an investigation, fix a date for a hearing at which all participating interested parties may present information and arguments orally.

(2) A hearing under subsection (1) shall be held not later than a period of two months prior to the date proposed for the determination regarding serious injury or threat thereof and causation.

(3) Participating interested parties intending to appear at a hearing shall notify the Director-General at least a period of one week prior to the date of the hearing, of the names of their representatives and witnesses who will appear at the hearing.

(4) Hearings shall be presided over by the Director-General or his nominee who shall ensure that confidentiality is preserved, and shall organize hearings in a manner that ensures that all participating interested parties have an adequate opportunity to present their views.

(5) The Director-General shall maintain a record of the proceedings at the hearing, which shall be placed in the public file maintained under section 19, with the exception of any confidential information.

19. (1) The Director-General shall establish and maintain a public file relating to each investigation or review conducted under this Act. Subject to the provisions of section 16, the Director-General shall place in the public file -

Public file and access thereto.

- (a) all public notices relating to the investigation or review;
- (b) all material, including questionnaires, responses to questionnaires and written communications submitted to the Director-General;
- (c) all other information developed or attained by the Director-General including any verification reports prepared under section 15; and
- (d) any other documents the Director-General deems appropriate for public disclosure.

(2) The public file shall be available to the public for review and copying at the office of the Director-General throughout the period of the investigation, review and of any resulting judicial review.

20. (1) Where, at any time during an investigation, any party interested -

Reliance on information available.

- (a) refuses access to, or otherwise does not provide any necessary information within the time determined by the Director-General; or
- (b) otherwise significantly impedes the investigation,

the Director-General may reach preliminary and final determinations (affirmative or negative), on the basis of the information available, including information contained in the application.

(2) The Director-General shall take due account of any difficulties experienced by parties interested, in particular small companies, in supplying information requested for, and as such shall provide any practicable assistance or may extend the time granted for the submission of any specified information, as the case may be.

Application of a provisional safeguard measure.

21. (1) The Director-General may recommend the application of a provisional safeguard measure, where he determines that -

- (a) there exists certain critical circumstances and delay in taking action may cause damage which would be difficult to repair; and
- (b) there is clear evidence that the increased imports of the investigated product has caused or are threatening to cause serious injury.

(2) A provisional safeguard measure shall take the form of a duty payable at the time of importation of the investigated product. This duty shall be in addition to any duty payable under any other written law.

(3) The Director-General shall submit his recommendations to the Minister, who shall forward the same to the Minister in charge of the subject of Finance.

(4) The Minister in charge of the subject of Finance upon receipt of the recommendations of the Director-General shall, in consultation with the Minister, determine whether or not to apply provisional safeguard measures and the amount of provisional duty to be imposed.

22. (1) Where a decision is taken up to apply a provisional safeguard measure under subsection (4) of section 21, the Minister shall direct the Director-General to publish a notice regarding such application in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, which shall contain the following information:-

Notification with regard to the application of a provisional safeguard measure.

- (a) a complete description of the investigated product, including its technical characteristics and uses and an identification of its tariff classification and the duties applicable;
- (b) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;
- (c) the names of all known producers of the domestic like or directly competitive products;
- (d) the country or countries of origin of the investigated product;
- (e) the basis for the determination of the existence of certain critical circumstances, where delay in the application of a provisional safeguard measure may cause damage that would be difficult to repair;
- (f) the basis for the determination of the existence of clear evidence that increased imports of the investigated products have caused or are threatening to cause serious injury;
- (g) the amount of duty increase which is proposed as a provisional safeguard measure; and
- (h) the intended duration of the period of application of the provisional safeguard measure.

(2) Where a decision is taken against the application of a provisional safeguard measure, the Minister shall direct the Director-General to publish a notice of the same in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, which shall contain the following information:-

- (a) a complete description of the investigated product, including the technical characteristics and uses and an identification of its tariff classification and the duties applicable ;
- (b) an identification of the domestic like or directly competitive product;
- (c) an explanation of the reasons for arriving at a decision against the application of a provisional safeguard measure; and
- (d) a statement as to whether the investigation will be terminated at that point, or continued through to a finality.

Duration of a provisional safeguard measure.

23. A provisional safeguard measure shall generally be applied for a period not exceeding two hundred days and may be suspended before the expiry of that period by the Minister in charge of the subject of Finance, in consultation with the Minister.

Payment and refund of a provisional safeguard measure.

24. (1) The amount of a provisional safeguard measure shall be collected and paid in the form of a cheque or a cash payment, or guaranteed by the furnishing of a bond or deposit in favour of the Director-General of Customs.

(2) Any amount collected as a provisional safeguard measure shall be refunded and any bond or deposit shall be promptly released, if subsequent investigations do not result in a determination that increased imports have caused or threaten to cause serious injury to the domestic industry.

(3) The Director-General of Customs shall be responsible for the assessment and collection of provisional safeguard measures, and the provisions of the Customs Ordinance relating to collection of duties, shall *mutatis mutandis* apply to and in relation to the same.

25. (1) The Director-General shall, in accordance with the provisions of section 4 and 5 of this Act, and on the basis of information disclosed at the investigation, determine whether increased imports of the investigated product have caused or threaten to cause serious injury to the domestic industry.

Determination of serious injury, threat of serious injury and causation.

(2) At the conclusion of an investigation, the Director-General shall prepare a report containing -

- (a) the final determination, including the findings and conclusions reached on all relevant issues of fact and law; and
- (b) a detailed analysis of all information disclosed at the investigation and the relevance of issues and factors examined by the Director-General.

(3) In the preparation of the report under subsection (2), due regard shall be given to the requirement for protection of confidential information.

26. The Director-General shall immediately upon reaching a determination, whether negative or affirmative, as to serious injury or threat thereof and causation, cause to be published in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, a notice of the determination regarding serious injury, or threat thereof and causation, containing the following information:-

Public notice and notification of determination of serious injury, threat of serious injury and causation.

- (a) a complete description of the investigated product, including its technical characteristics and uses and an identification of its tariff classification and the duties applicable;

- (b) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;
- (c) the names of all known producers of the domestic like or directly competitive products;
- (d) the country or countries of origin of the investigated product; and
- (e) a summary of the information disclosed at the investigation, factors considered and the relevance thereof and the findings and conclusions reached on the relevant issues of fact and law and the reasons therefor.

General
principle on
definitive
safeguard
measure.

27. (1) The Director-General shall submit the report prepared under subsection (2) of section 25 to the Committee, together with the recommendations of the Director-General on the application of a definitive safeguard measure.

(2) The Committee may within a period of ten working days of the receipt of the documents referred to in subsection (1), recommend to the Minister in charge of the subject of Finance through the Minister, the application of a definitive safeguard measure, where it determines that –

- (a) as a result of unforeseen developments, increased imports have caused or threaten to cause serious injury to the domestic industry; and
- (b) application of a definitive safeguard measure is in the public interest.

(3) The duration and level of application of a definitive safeguard measure shall not be more than what is necessary to prevent or remedy serious injury and to facilitate adjustments.

28. Where the Committee recommends the imposition of a definitive safeguard measure, the Minister in charge of the subject of Finance in consultation with the Minister shall, within a period of fourteen working days of the date of receipt of the recommendation of the Committee and taking into consideration the interests of the national economy, determine whether or not to adopt such safeguard measure.

Minister to determine the adoption of definitive safeguard measure.

29. (1) Where a decision is taken to apply a definitive safeguard measure, it shall be the duty of the Director-General to publish in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, a notice which shall contain the following information:-

Notice recording of application of definitive safeguard measure.

- (a) a complete description of the investigated product, including its technical characteristics and uses and an identification of its tariff classification and the duties applicable;
- (b) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;
- (c) names of all known producers of the domestic like or directly competitive products;
- (d) country or countries of origin of the investigated product;
- (e) a summary of the affirmative injury determination, including the factors considered and the relevance thereof, the findings and conclusions and the reasons therefor on issues of fact and law considered or a cross reference to the notice of determination regarding serious injury or threat thereof and causation;
- (f) reasons for reaching the conclusion that the application of a definitive safeguard measure is in the public interest;

- (g) details concerning the domestic industry's adjustment plan;
- (h) the form, level and duration of the proposed definitive safeguard measure, and an explanation thereof in compliance with the requirements referred to in subsection (3) of section 27;
- (i) the proposed date of application of the definitive safeguard measure;
- (j) if a quantitative restriction is proposed, the allocation of the quota among the supplier countries, and an explanation and the relevant information in compliance with the requirements referred to in section 31, regarding the basis on which the allocation is made;
- (k) if the proposed duration of the measure (including the period of application of any provisional safeguard measure) is more than a period of one year, a timetable for the progressive liberalization of the measure; and
- (l) an identification of the developing countries exempted from the measure.

(2) Where a decision is taken against the application of a definitive safeguard measure, it shall be the duty of the Director-General to publish a notice setting forth the factual and legal basis for reaching such decision, in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages.

Form and application of a definitive safeguard measure.

30. (1) A definitive safeguard measure shall generally be applied in the form of either a tariff increase or a quantitative restriction on imports, and subject to the provisions of section 31, be applied on all imports of the investigated product, irrespective of its source, entered on or after the date on which the measure comes into effect.

(2) Where the definitive safeguard measure is applied in the form of a tariff increase, the Director-General of Customs shall be responsible for the collection of such tariff increase, while the administration of a definitive safeguard measure in the form of a quantitative restriction shall be the responsibility of the Controller of Imports and Exports.

31. (1) Notwithstanding anything to the contrary in any other provisions of this Act, a definitive safeguard measure shall not be applied to imports of the investigated product originating in a developing country Member, so long as those imports account for not more than three *per centum* of Sri Lanka's total imports of the investigated product.

Non-application of definitive safeguard measure to certain developing countries.

(2) Notwithstanding the provisions of subsection (1), where imports from developing country Members which individually account for less than three *per centum* of Sri Lanka's imports of the investigated product, collectively account for more than nine *per centum* of Sri Lanka's imports of the investigated product, a definitive safeguard measure may be applied to such imports from those developing country Members.

32. (1) A definitive safeguard measure in the form of a quota on imports of the investigated product, shall not reduce the quantity of those imports below the average level registered in the most recent three representative years for which statistics are available.

Quotas as definitive safeguard measure.

(2) Notwithstanding the provisions of subsection (1), the Minister in charge of the subject of Finance in consultation with the Minister, may, where there are sufficient reasons to justify that a different level is necessary to prevent or remedy serious injury or threat of serious injury, apply a quota which reduces the quantity of imports of the investigated product below the average level registered in the most recent three representative years for which statistics are available.

(3) Where more than one country exports the investigated product to Sri Lanka, any quota on imports shall be allocated among all the supplying countries.

(4) Where the Minister in charge of the subject of Finance, in consultation with the Minister, determines that the method referred to in subsection (3) is not reasonably practical for allocation of the quota, he shall allocate the quota among countries having a substantial interest in supplying the investigated product. The allocation shall be based upon the proportions of the investigated product supplied by such countries during the previous three years, and due account shall also be taken of any special factors which may have affected or may be affecting trade in the investigated product.

Duration of a definitive safeguard measure.

33. (1) A definitive safeguard measure shall be applied for a period of not more than four years, including the period of application of any provisional measure, unless it is extended under the provisions of section 36.

(2) The total duration of the period of application of a definitive safeguard measure, including the period of application of any provisional measure, the period of initial application and any extension thereof under section 36, shall not exceed a period of ten years.

Progressive liberalization.

34. A definitive safeguard measure whose period of application exceeds a period of one year, shall be progressively liberalized at regular intervals during the period of its application, in accordance with the notice published regarding application of a definitive safeguard measure under section 29.

Review.

35. (1) Where the duration of a definitive safeguard measure (including the period of application of any provisional measure) exceeds three years, not later than the mid-term of the period of application of such measure, the Director-General shall review the situation, including a review of the effects of the definitive safeguard measure on the domestic industry concerned, and of the industry's progress in implementing its adjustment plan.

(2) The provisions of sections 11 to 19 of this Act shall apply *mutatis mutandis* in respect of such review.

(3) The result of the review shall be published in a report prepared by the Director-General and he shall thereafter forward such report to the Committee to make its recommendations as to whether to maintain or withdraw the definitive safeguard measure or to increase the pace of its liberalization.

(4) A notice to maintain, liberalize or withdraw a definitive safeguard measure summarizing the results of the review, shall be published in the *Gazette*. The contents of such notice shall conform, *mutatis mutandis*, to the requirements specified in respect of the notice regarding application of a definitive safeguard measure provided for in section 29.

36. (1) Where the domestic industry considers that there is a continuing need to apply a definitive safeguard measure beyond the initial period of its application, it shall submit a written request for extension of the measure, including evidence of the industry's adjustment plan, to the Director-General, not less than a period of six months before the end of that period.

Extension of a definitive safeguard measure.

(2) The Director-General shall conduct an investigation to determine whether an extension is warranted, and for the purpose of such investigation and determination, the procedures set forth in this Act for applying the original measure shall *mutatis mutandis* be followed.

(3) Subject to the provisions of section 33, a safeguard measure may be extended only once.

(4) The Director-General may recommend the extension of a definitive safeguard measure, only where he determines through an investigation referred to subsection (2), that the definitive safeguard measure continues to be necessary to prevent or remedy serious injury, and that there is evidence that the domestic industry is adjusting.

(5) The Director-General shall submit his recommendations to the Committee within a period of ten working days, and the Committee may within a period of ten working days of the receipt of the same, recommend to the Minister in charge of the subject of Finance through the Minister, the extension of a definitive safeguard measure, where it determines that –

- (a) the safeguard measures continues to be necessary to prevent or remedy serious injury; and
- (b) there is evidence that the domestic industry is adjusting.

(6) Where the Committee recommends the extension of a definitive safeguard measure, the Minister in charge of the subject of Finance in consultation with the Minister shall, within a period of fourteen working days of the receipt of the recommendation of the Committee taking into consideration the interest of the national economy, determine whether or not to extend such safeguard measure.

(7) An extended definitive safeguard measure shall not be more restrictive than it was at the end of the initial period of application.

(8) During an extension period, a safeguard measure shall continue to be progressively liberalized in accordance with a notice published to extend a definitive safeguard measure. Such notice shall conform *mutatis mutandis* to the requirements in respect of the notice applying a definitive safeguard measure, provided for in section 29.

Confidential
information not
to be disclosed.

37. (1) Information gathered by any person in the course of an investigation conducted under this Act or thereafter, which is entitled to be treated as confidential information under section 16, shall not be disclosed by such person unless required or authorized to do so under the provisions of this Act.

(2) Any person who in contravention of the provisions of subsection (1) discloses any confidential information as referred to therein, shall be guilty of an offence and be liable on conviction to a fine not exceeding rupees one hundred thousand or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

38. Any party who participated in or who had an interest in an investigation or review procedure under this Act, may seek judicial review in terms of Article 140 of the Constitution. Judicial review.

39. (1) The Director-General may delegate any of his functions and powers under this Act to any officer not below the rank of Deputy Director of Commerce. Delegation by the Director-General.

(2) An officer to whom any function or power is delegated under subsection (1), shall discharge or exercise such function or power, subject to such directions as may be given by the Director-General.

(3) The Director-General shall, notwithstanding any delegation made under subsection (1), have the right to discharge or exercise any function or power so delegated.

40. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are authorized to be made. Regulations.

(2) Every regulation made by the Minister shall be published in the *Gazette*, and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation is deemed to be rescinded shall be published in *Gazette*.

Interpretation.

41. In this Act unless the context otherwise requires –

“country” includes Members of the World Trade Organization or any other country or autonomous customs territory;

“directly competitive product” means domestic product similar to or serving as a substitute for the product subject to investigation;

“domestic industry” means the producers as a whole of products which are like or directly competitive with the investigated product operating within the territory of Sri Lanka, or those producers operating within the territory of Sri Lanka whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products;

“increased quantity” includes increase in import whether in absolute terms or relative to domestic production;

“interested parties” means –

- (a) an exporter and foreign producer of the investigated product;
- (b) an importer of the investigated product;
- (c) trade or business associations, a majority of the members of which are producers, exporters or importers of the investigated product;
- (d) the government of an exporting country or countries;
- (e) producers of the domestic like or directly competitive products in Sri Lanka;

- (f) trade and business associations, a majority of the members of which are producers of the domestic like or directly competitive products in Sri Lanka;
- (g) labour unions or other organizations representing the interests of workers in the domestic industry;
- (h) consumer associations;
- (i) industrial users of the investigated product; and
- (j) any other natural or legal person as determined by the Director-General to have a sufficient interest in the outcome of an investigation;

“investigated product” means an imported product subject to safeguard investigation under this Act as described in the notice of initiation;

“like products” means domestic products which are identical or alike in all respects to the product subject to investigation or, in the absence of such products, another product that although not alike in all respect have the same physical, technical or chemical characteristics closely resembling the product under investigation;

“Member” means Member of the World Trade Organization;

“Minister” means the Minister in charge of the subject of Trade;

“participating interested parties” means those interested parties that have indicated their interest in participating in an investigation, in accordance with the provisions of section 11 of this Act;

“serious injury” means a significant overall impairment in the position of a domestic industry; and

“threat of serious injury” means a serious injury that is clearly imminent.

Sinhala text to prevail in case of inconsistency.

42. In the case of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

