

SAFEGUARD MEASURES

Safeguard measures are defined as "emergency" actions to address serious injury to the importing Member's domestic industry for a particular product. Safeguard duties give domestic producers a period of grace to become more competitive vis-à-vis imports, when imports of a particular product suddenly increase to a point that they cause or threaten to cause serious injury to domestic producers of like or directly competitive products, a safeguard duty is used as temporary relief. The Safeguard duties are applicable against all the countries with uniform rate of duty unlike the anti-dumping duties.

Safeguard Measures are applicable on all imports of the like article or directly competitive article from all the countries. However, the safeguard duty is applicable to only those developing countries where the imports are more than 3%, provided that developing country members with less than 3% share collectively account for not more than 9% of the total imports of the product under consideration.

The stages of Safeguard investigation process:

An Application received by the Authority is dealt with in the following manner:

A. Pre-Initiation:

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation.

B. Initiation:

The application is examined to ensure that it has been made by or on behalf of the Domestic Industry. It also examines the accuracy and adequacy of the

evidence provided in the application and when satisfied that there is sufficient evidence regarding increased/ surge in imports, serious injury and causal link, a notification is issued initiating an investigation.

C. Public Notice and Inspection Folder:

A public notice is issued to the interested parties for filing responses. The non- confidential versions of all the applications/responses is kept open for inspection for the interested parties in the form of a inspection folder.

D. Preliminary Findings:

The Authority shall proceed expeditiously with the conduct of the investigation and may, in appropriate cases, make a preliminary finding containing the detailed information behind the determination.

E. Provisional Duty:

A provisional duty may be imposed by the Central Government on the basis of the preliminary finding recorded by the Authority. The provisional duty will remain in force only for a period not exceeding 200 days from the date of imposition of duty.

F. Oral Evidence & Oral Hearing:

Interested parties who participate in hearing may present the relevant information orally. However, such oral information shall be taken into consideration only when it is subsequently reproduced in writing. The Director General may grant oral hearing anytime during the course of the investigation.

G. Final Determination:

The Authority examines all the submissions of the parties made during the course of the investigation and comes out with final findings.

H. Recommendation of duties:

After the final determination is made and the final findings are issued, the matter is then referred to the Board of Safeguards, which in turn, decides

upon whether the duties are to be imposed or not. Such recommendation is made considering matters like public interest etc.

I. Duty Notification

If the duties are approved by the Board of Safeguards, a copy of the Final Findings is sent to the Tax Research Unit in Department of Revenue, which in turn, notifies the duty.

J. Time-limit for Investigation Process

Normal time allowed by the statute for conclusion of investigation and submission of final findings is 8 months from the date of initiation of the investigation or within such extended period as determined by the Central Government.

The period of validity of safeguard measure:

The safeguard duty shall be levied only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate positive adjustment. The duty levied shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition.

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition. Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

The various review mechanisms under Safeguard Measure:

The Authority shall, from time to time, review the need for continued imposition of the safeguard duty and shall, if it is satisfied on the basis of information received, that –

- a) such safeguard duty is necessary to prevent or remedy serious injury and there is sufficient evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of that duty;
- b) there is no justification for the continued imposition of such safeguard duty, recommend to the Central Government for its withdrawal.

Any measure of more than three year's duration must be reviewed not later than mid-term of such imposition and if appropriate, recommend for withdrawal of such safeguard duty or for the increase of liberalization of duty.

The Authority shall, from time to time, review the need for continued imposition of the safeguard quantitative restrictions and shall, if it is satisfied on the basis of information received that –

- a) safeguard quantitative restrictions is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of quantitative restrictions;
- b) there is no justification for the continued imposition of such restriction, recommend to the Central Government for its withdrawal.

Any measure of more than three year's duration must be reviewed not later than the mid- term of such imposition and if appropriate, recommend for withdrawal of such safeguard quantitative restrictions or for the increase of the liberalisation of quantitative restrictions.

As per Article 7.5 of Agreement on Safeguards, no safeguard measure shall be applied again to the import of a product which has been subject to

such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non- application is at least two years.

The Safeguard Rules require that in case the injury to the domestic industry is caused due to dumping, the domestic industry may seek imposition of anti-dumping duty and not safeguard duty. The safeguard duty is mainly meant to address the injury caused on account of surge in imports.

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