

Safeguard Measures Rules, 2003

GOVERNMENT OF PAKISTAN
MINISTRY OF COMMERCE

.....

Islamabad, the 27th January 2003

NOTIFICATION

S.R.O. 75(I)/2003. – In exercise of the powers conferred by section 38 of the Safeguard Measures Ordinance, 2002 (XXXI of 2002), the Federal Government is pleased to make the following rules, namely:-

1. Short title and commencement. – (1) These rules may be called the Safeguard Measures Rules, 2003.

(2) They shall come into force at once.

2. Definitions . – (1) In these rules, unless there is anything repugnant in the subject or context,-

(a) "Ordinance" means the Safeguard Measures Ordinance, 2002 (XXXI of 2002); and

(b) "Requesting enterprises" means the enterprises or entities represented in an application submitted under section 7 of the Ordinance read with rule 3.

(2) The words and expressions used in these rules but not defined shall have the meaning assigned to them in the Ordinance.

3. Submission of and disclosure in an application under section 7 of the Ordinance.–

(1) An application under clause (a) of sub-section (1) of section 7 of the Ordinance shall be submitted in duplicate, addressed to the Secretary of the Commission, along with fee as may be fixed by the Commission from time to time.

(2) The application shall include such information as is reasonably available to the applicant on the following, namely:-

(a) A complete description of the imported product including its technical characteristics and uses, its current tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969), and the duties applicable thereto;

(b) a complete description of the domestic like or directly competitive products including their technical characteristics and uses;

(c) the names, addresses, telephone numbers, facsimile number and electronic mail address of 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 fiscal years preceding the request, and any more recent partial-year data, by country of origin;

(f) a description of the increase in imports alleged to exist, in particular, whether such increase is absolute, relative to domestic production, or both;

(g) information relevant to the existence of serious injury or threat of serious injury to domestic industry, for each of the three fiscal

years preceding the request, and any more recent partial-year data, including but not limited to,-

(i) with respect to serious injury-

(a) volume and value of domestic production;

(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 domestic industry;

(g) changes in price levels;

(h) productivity e.g., output per worker;

(i) profit and loss;

(j) return on investment;

(k) cash flow; and

(l) any other indicators considered relevant; and

(ii) with respect to threat of serious injury, if alleged, also the information regarding the probability that imports will increase, including, for example, trade restrictions on exports to third country markets;

(h) an explanation, in the light of data provided in the request and the requirements of the Ordinance, of the reasons why it is believed that serious injury or threat of serious injury exists and is caused by increased quantities of imports; and

(i) a plan for adjusting domestic industry to competition from imports.

4. Withdrawal of application.- An applicant seeking to withdraw an application, shall request the Commission in writing, prior to the initiation of investigation. The request for withdrawal of application shall be made to the Commission within twenty-five days of the date of submission of an application.

5. Initiation of investigation.- The Commission shall normally decide whether or not to initiate an investigation within a period of thirty days of the date of receipt of an application in compliance with the provisions of rule 3:

Provided that when an application involves complex issues, or if the Commission has sought additional information from the applicant, the time period may, if the Commission so deems fit, be extended for a further period not exceeding fifteen days.

6. Fee for providing the text of an application.- Subject to the provisions of section 11 of the Ordinance, any interested party shall be provided with the full text of an application submitted under rule 3 upon payment to the Commission of a fee as may be fixed by the Commission from time to time.

7. Disclosure in the public notice of initiation of investigation. – (1)

The public notice of initiation of an investigation referred to in clause (b) of subsection (1) of section 10 of the Ordinance shall include adequate information on the following, namely:-

(a) A complete description of the investigated product including its technical characteristics and uses, its current tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969), and the duties applicable thereto;

- (b) a complete description of the domestic like or directly competitive products including their technical characteristics and uses;
- (c) the names of the requesting enterprises 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 allegations of increased imports and serious injury or threat of serious injury caused by increased imports are based;
- (f) the name, address and telephone number of contact of the person at the Commission;
- (g) a statement that the date of initiation of investigation is the date of publication of the notice of initiation of investigation;
- (h) whether or not imposition of a provisional safeguard duty will be considered by the Commission;
- (i) the date by which any interested party which desires hearing must request the Commission in writing; and
- (j) the proposed schedule for the investigation including-
 - (i) the date by which interested parties desiring to participate in the investigation must so inform the Commission in writing;
 - (ii) where application of a provisional safeguard duty will be considered, the schedule for and deadlines pertaining to the preliminary phase of the investigation, for example, the deadline for any written arguments or other submissions; and
 - (iii) the proposed schedule for the determination regarding application of a provisional safeguard duty, where applicable, and for the final determination regarding serious injury or threat of serious injury and for any decision regarding the application of a definitive safeguard measure.

8. Written arguments.- All participating interested parties shall have the opportunity, in accordance with the provisions of this rule, to present evidence and arguments in writing, including responses to the written and oral presentations of other participating interested parties.

(2) In an investigation in which application of a provisional safeguard duty will be considered, any participating interested party may submit written arguments concerning any matter it considers relevant to the preliminary phase of the investigation no later than twenty-one days before the date proposed for the determination regarding the application of a provisional safeguard duty.

(3) In an investigation in which no hearing is requested, any participating interested party may submit written arguments concerning any matter it considers relevant to the investigation no later than sixty days before the date proposed for the determination regarding serious injury or threat of serious injury.

Participating interested parties shall have a further ten days after the said sixty days period for initial written submissions to submit any written responses to the written submissions of other participating interested parties.

(4) In an investigation in which a hearing is held, no later than ten days

before the scheduled date of the hearing, any participating interested party may submit written arguments and information concerning any matter it considers relevant to the investigation. Following the hearing, interested parties who participated in the hearing may, within ten days, submit further written arguments in response to arguments and information presented at the hearing.

(5) The Commission shall allow industrial users of an investigated product in Pakistan, and representative consumer organizations in cases where the investigated product is commonly sold at the retail level in Pakistan, to provide information concerning matters relevant to the investigation regarding increased quantities of imports and injury. Such information shall be provided to the Commission in writing.

9. Hearings. – (1) The Commission shall, upon request of a participating interested party made no later than fifteen days after the initiation of an investigation, or if the application of a provisional safeguard duty shall not be considered, no later than thirty days after initiation of the investigation, schedule a hearing at which all participating interested parties may present information and arguments. Where the presentation is oral, it shall be confirmed in writing by a specified date.

(2) There shall be no obligation on any participating interested party to appear at a hearing and failure to do so shall not be prejudicial to that participating interested party's case. The Commission shall, to the extent possible, organize hearings so as to take into account the convenience of the participating interested parties.

(3) Participating interested parties intending to appear at a hearing shall notify the Commission at least seven days before the date of the hearing of the names of their representatives and witnesses, if any, who shall appear at the hearing.

(4) Hearings shall be organized by the Commission in a manner that ensures that all participating interested parties have an adequate opportunity to present their views.

(5) The Secretary of the Commission shall maintain a record of the hearing which shall, subject to the requirement to protect confidential information under section 14 of the Ordinance, be promptly placed in the public file to be maintained pursuant to section 15 of the Ordinance.

10. Access to public file. – (1) Subject to the requirement to protect confidential information under section 14 of the Ordinance, the Commission shall place the following information and documents in the public file to be maintained pursuant to sub-section (1) of section 15 of the Ordinance, namely:-

- (a) All public notices relating to the investigation or review;
- (b) all materials including questionnaires, responses to questionnaires and written communications submitted to the Commission;
- (c) all other information developed or obtained by the Commission;
- and
- (d) any other documents the Commission deems appropriate for disclosure to a participating interested party.

(2) Subject to the provisions of sub-section (2) of section 15 of the Ordinance, copies of documents placed in the public file may be obtained upon payment to the Commission of a fee as may be fixed by the Commission from time to time.

11. Disclosure in public notice of non-application of provisional safeguard duty. – The public notice of non-application of a provisional safeguard measure referred to in sub-section (1) of section 20 of the Ordinance shall include the following information, namely:-

- (a) A complete description of an investigated product including its technical characteristics and uses, its current tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969), and the duties applicable thereto;
- (b) an identification of the domestic like or directly competitive products;
- (c) an explanation of the reasons for the decision not to apply a provisional safeguard measure; and
- (d) a statement indicating whether an investigation shall be terminated at that point or continued through the final phase.

12. Disclosure in public notice of application of provisional safeguard duty.– (1) The public notice of application of a provisional safeguard duty referred to in sub-section (2) of section 21 of the Ordinance shall include the following information, namely:-

- (a) A complete description of an investigated product including its technical characteristics and uses, its current tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969), and the duties applicable thereto;
- (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 an investigated product;
- (e) where applicable, the basis for the determination of critical circumstances where delay would cause damage that would be difficult to repair and the basis for the determination of the existence of clear evidence that increased imports of an investigated product have caused or are threatening to cause serious injury;
- (f) the amount of the provisional safeguard duty to be applied to an investigated product; and
- (g) the intended duration of the provisional safeguard duty.

13. Disclosure in the notice of negative final determination.– The notice of negative final determination referred to in sub-section (6) of section 24 of the Ordinance shall include information on the following, namely:-

- (a) A complete description of an investigated product including its technical characteristics and uses, its current tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969) and the duties applicable thereto;
- (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 an investigated product; and

(e) a summary of the information obtained in an investigation, the factors considered and the relevance thereof, and the findings and conclusions reached on the issues of fact and law considered, and the reasons therefor.

14. Disclosure in the notice of application of a definitive safeguard measure. – (1) The notice of application of a definitive safeguard measure referred to in sub-section (1) of section 26 of the Ordinance shall include information on the following, namely:-

- (a) A complete description of an investigated product including its technical characteristics and uses, its current tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969), and the duties applicable thereto;
- (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 an investigated product;
- (e) a summary of the affirmative injury determination including the factors considered and the relevance thereof, as well as of the findings and conclusions, and the reasons therefor, on the issues of fact and law considered;
- (f) details concerning the domestic industry's adjustment plan;
- (g) the form, level, amount and duration of the definitive safeguard measure to be applied and an explanation thereof in the light of the domestic industry's adjustment plan;
- (h) the date of commencement of the definitive safeguard measure;
- (i) if the definitive safeguard measure is to take the form of a quota on imports of an investigated product, the allocation of the quota among the supplier countries, and an explanation and the relevant information in the light of the provisions of section 30 of the Ordinance regarding the basis on which such allocation has been made;
- (j) if the proposed duration of the measure including the period of application of any provisional safeguard measure applied in respect of an investigated product is more than one year, a timetable for the progressive liberalization of the measure; and
- (k) where applicable, an identification of the developing countries exempted from the application of the definitive safeguard measure, under section 29 of the Ordinance.

15. Official file to be maintained by the Commission.– (1) The Commission shall establish and maintain an official file relating to each investigation or review pursuant to the Ordinance and shall place in such file the following, namely:-

- (a) All materials, papers and documents, confidential or otherwise, including questionnaires, responses to questionnaires, and written communication submitted to or by the Commission in connection with any investigation or review;
- (b) all documents relating to or setting out any calculations made by the

Commission in connection with any investigation or review;

- (c) all internal correspondence or memoranda of the Commission relating to or in connection with any investigation or review that are relevant to the determination of serious injury or threat of serious injury and causation from increased imports including any correspondence with or between any other Ministry, Division, department, agency or instrumentality of the Federal Government or any Provincial Government;
- (d) any other information developed, obtained or relied on by the Commission in connection with any investigation or review; and
- (e) any other document or information that the Commission deems appropriate for placing in such official file.