

BUDGET 2021-2022

Amendment in the provisions relating to Safeguard Measures

A. Synopsis

The government of India in Clause 92 of the Finance Bill 2021 seeks to amend sub-section (6) of section 8B of the Customs Tariff Act which deals with the Safeguard measures. The amendment is proposed to make both conditions of sub-section (6) of section 8B mutually exclusive and to define the expression 'special economic zone' in the same manner as defined in the Special Economic Zone Act, 2005 (28 of 2005). Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 has also been amended to further Strengthen the Safeguard measures.

B. Other Miscellaneous changes pertaining to Safeguard Measures

Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (Safeguard Duty being changed to Safeguard Measures) provide for manner and procedure for causing investigation into the cases of imports in increased quantity that cause injury to domestic industry. Changes in the rules are being proposed to elaborate in detailed manner the modalities of implementation of safeguard measure, along with technical modifications consequent to the changes made earlier in section 8B of the Customs Tariff Act vide Finance Act, 2020.

C. Analysis of changes made to Safeguard Measures Laws and Rules:

Section – 8B (Power of Central Government to apply safeguard measures)		
Current provisions	Proposed provisions	Effect of the changes made
(6) Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless-	(6) Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless-	Clause 92 of the Finance Bill 2021 seeks to amend sub-section (6) of section 8B of the Customs Tariff Act to make both conditions thereunder mutually exclusive and to define the expression 'special economic zone' in the same manner as defined in the Special Economic Zone Act, 2005 (28 of 2005).

<p>(i) it is specifically made applicable in such notification or to such undertaking or unit;</p> <p>(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.</p> <p>Explanation—For the purposes of this section, the expressions “hundred per cent. export-oriented undertaking”, and “special economic zone” shall have the same meaning as assigned to them in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944. (1 of 1944.)”</p> <p>Customs Tariff Rules, 1997 (Safeguard Rules)</p> <p>2. Definitions. - In these rules, unless the context otherwise requires, -</p> <p>(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975);</p>	<p>(i) it is specifically made applicable in such notification or to such undertaking or unit or;</p> <p>(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.</p> <p>Explanation—For the purposes of this sub-section—</p> <p>(a) the expression “hundred per cent. Export oriented undertaking” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub section (1) of section 3 of the Central Excise Act, 1944;</p> <p>(b) the expression “special economic zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.”</p> <p>Customs Tariff Rules, 1997 (Safeguard Rules)</p> <p>2. Definitions. - In these rules, unless the context otherwise requires, -</p> <p>(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975);</p>	<p>Further Strengthened Safeguard measures.</p>
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<p>(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 safe-guard duty would cause irreparable damage to the domestic industry;</p> <p>(c).....</p> <p>(d) "Interested Party" includes</p> <p>(i) any exporter or foreign producer or the importer of an article subjected to investigation for purposes of imposition of safeguard duty or a trade or business association, majority of the members of which are producers, exporter or importers of such an article;</p> <p>(ii)...</p> <p>(iii)...</p> <p>(e).....</p> <p>(f) "Provisional Duty" means a safeguard duty imposed under sub-section (2) of section 8B of the Act;</p> <p>(g).....</p>	<p>(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 safe-guard measure would cause irreparable damage to the domestic industry;</p> <p>(c).....</p> <p>(d) "Interested Party" includes</p> <p>(i) any exporter or foreign producer or the importer of an article subjected to investigation for purposes of imposition of safeguard Measures or a trade or business association, majority of the members of which are producers, exporter or importers of such an article</p> <p>(ii)...</p> <p>(iii)...</p> <p>(e).....</p> <p>(f) "provisional measure" means provisional safeguard measure imposed under sub-section (5) of section 8B of the Act;</p> <p>(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;</p> <p>(g).....</p> <p>(ga) "WTO" means the World Trade Organisation;</p>	<p>In the Safeguard Rules the word "Duty" has been replaced with the word "Measure(s)".</p> <p>Inserted definition of "safeguard measure"</p> <p>Inserted meaning of "WTO"</p>
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<p>5. Initiation of Investigation.</p> <p>(1).....</p> <p>(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, -</p> <p>(a).....</p> <p>(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition.</p> <p>(3).....</p> <p>(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 Commissioner of Customs 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).</p> <p>6. Principles Governing Investigations. -</p> <p>(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,</p>	<p>5. Initiation of Investigation.</p> <p>(1).....</p> <p>(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, -</p> <p>(a).....</p> <p>(b) a statement on the efforts being taken, or planned to be taken, or both, to make a [positive omitted] adjustment to import competition.</p> <p>(3).....</p> <p>(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 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).</p> <p>6. Principles Governing Investigations. -</p> <p>(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,</p>	<p>Expression ‘positive’ omitted</p> <p>The Safeguard Rules are being amended to provide for the manner and procedure for causing investigation into the cases of imports in increased quantity that cause injury to domestic industry for imposition of Safeguard TRQs.</p>
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<p>contain adequate information on the following, namely: -</p> <p>(i) the name of the exporting countries and the article involved;</p> <p>(ii).....</p> <p>8. Determination of serious injury or threat of serious injury. -</p> <p>The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the principles laid down in Annex to these rules.</p> <p>ANNEXURE (See Rule 8)</p> <p>(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.</p> <p>(2) The determination referred to in paragraph (1) shall not be made unless the investigation demonstrates, on</p>	<p>contain adequate information on the following, namely: -</p> <p>(i) the name of the exporting countries, article involved and volume of imports;</p> <p>(ii).....</p> <p>8. Determination of serious injury or threat of serious injury. -</p> <p>The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account the following principles, namely: -</p> <p>(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;</p> <p>(ii) the determination referred to in clause (i)</p>	<p>The ANNEXURE shall be omitted.</p>
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<p>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 a cases, the Director General may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.</p> <p>11. Final findings – (1).....</p> <p>(2) The Director General shall also give its recommendation regarding amount of duty which, if levied, would be adequate to prevent or remedy serious injury and to facilitate positive adjustment.</p>	<p>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 antidumping or countervailing duty investigations, as appropriate.</p> <p>11. Final findings – (1).....</p> <p>(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;</p> <p>(b) the level of tariff rate quota, if imposed as a measure, may be determined having regard to the following conditions, namely:-</p> <p>(i) maintaining traditional trade flow of the article over the representative period;</p>	<p>The safeguard measure shall include the imposition of safeguard duty or application of a tariff rate quota or any other measure considered appropriate.</p>
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(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

<p>(3) The Director General shall also make his recommendations regarding the duration of levy of duty :</p> <p>Provided that where the period recommended is more than one year, the Director General shall also recommend progressive liberalisation adequate to facilitate positive adjustment.</p> <p>(4).....</p> <p>13. Imposition of duty on non-discriminatory basis. -</p> <p>Any safeguard duty imposed 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.</p>	<p>may use the residual tariff rate quota available;</p> <p>(f) any unused tariff rate quota may be carried forward and added to the tariff rate quota for the subsequent period.</p> <p>3) The Director General shall also make his recommendations regarding the duration of levy of measure:</p> <p>Provided that where the period recommended is more than one year, the Director General shall also recommend progressive liberalisation adequate to facilitate [positive omitted] adjustment.</p> <p>(4).....</p> <p>13. Imposition of [measure] on non-discriminatory basis. -</p> <p>Any safeguard measure imposed 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.</p> <p>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 percent 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</p>	
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<p>15. Refund of duty. - If the safeguard duty imposed after the conclusions of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.</p> <p>18. Review. - (1) The Director General shall, from time to time, review the need for continued imposition of the safeguard duty and shall, if he is satisfied on the basis of information received to him that, -</p> <p>(i) safeguard duty 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 duty;</p> <p>(ii).....</p> <p>(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 8 months from the date of initiation of such review or</p>	<p>less than three percent import share taken together, does not exceed nine percent of the total import of that article in India.</p> <p>15. Refund of duty. - 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.</p> <p>18. Review. - (1) The Director General shall, from time to time, review the need for continued imposition of the safeguard measure and shall, if he is satisfied on the basis of information received to him that, -</p> <p>(i) safeguard measure is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting [positively omitted], it may recommend to the Central Government for the continued imposition of duty;</p> <p>(ii).....</p> <p>(1A) The Director General may review the usage and implementation of the tariff rate quota for any modification.</p> <p>(2) Any review initiated under sub-rule (1) or sub-rule (1A) shall be concluded within a period not exceeding 8 months from the date of initiation of</p>	
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within such extended period as the Central Government may allow.

such review or within such extended period as the Central Government may allow.

19. Notification and consultation. – (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.