

SAFEGUARDS REGULATION

PART I

PRELIMINARY

Short title and commencement

1. (1) This Regulation may be cited as the Safeguards Regulation.
- (2) This Regulation comes into operation on a date to be appointed by the Minister by notification.

Interpretation

2. In this Regulation, unless the context otherwise requires:
 - "threat of serious injury" means serious injury that is clearly imminent;
 - "Member" means a Member of the World Trade Organization;
 - "prescribed" means prescribed by regulations made under this Regulation;
 - "GATT 1994" means the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement;"domestic industry" means:
 - (a) the domestic producers as a whole of products which are like or directly competitive with the product under investigation, operating in Mongolia; or
 - (b) the domestic producers operating in Mongolia whose collective output of like products or products directly competitive with the product under investigation constitutes a major proportion of the total domestic production of those products;
 - "Committee" means the Committee on Safeguards of the World Trade Organization;
 - "like products" means products that are identical or alike in all respect to the product under investigation or, in the absence of such products, another product that although not alike in all respect have characteristics closely resembling the product under investigation;
 - "directly competitive products" means products that are in competition despite differences in characteristics or composing materials, substitutability in terms of utility purpose or commercial competitiveness;
 - "product under investigation" means the class or kind of products imported or sold for importation into Mongolia that is subject of safeguard action under this Regulation, as determined by the Government to be appropriate for establishing the scope of action;
 - "serious injury" means a significant overall impairment in the position of a domestic industry;
 - "Government" means the Government of Mongolia;
 - "Minister" means the Minister charged with the responsibility for international trade;

- "country" includes all World Trade organisation Members or any other country or autonomous customs territory;
- "officer of customs" has the same meaning as is assigned to that expression under the customs Regulation;
- "Agreement" means the Agreement on Safeguards of the World Trade Organization;
- "interested parties" means:
 - (a) the foreign exporter and producer of the product under investigation;
 - (b) the importer of the product under investigation;
 - (c) the government(s) of the exporting country or countries;
 - (d) the domestic producers of the like products or directly competitive products;
 - (e) relevant trade and business associations registered in Mongolia;
- "participating interested parties" means those interested parties that have indicated their interest in participating in an investigation in accordance with section 11;
- "investigating authority" means the investigating authority appointed under section 3;
- "WTO" means the World Trade Organization.

PART II

THE INVESTIGATING AUTHORITY

Appointment of the investigating authority

3. The Minister may appoint and authorize an investigating authority to conduct an investigation under this Regulation.

Appointment of officers

4. The Minister may, from time to time, appoint and authorise such officers as are necessary to perform the functions and powers under this Regulation.

Protection of officers and persons acting under the Regulation and regulations

5. No action or prosecution shall be brought, instituted or maintained in any court against any officer or person authorized under this Regulation and the regulations made under this Regulation for or on account of or in respect of any Regulation ordered or done for the purpose of carrying into effect this Regulation and the regulations made under this Regulation, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any Regulation done or purported to be done by him under the order, direction or instruction of any such officer or person if the Regulation was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Duties and powers of the investigating authority

6. (1) The investigating authority shall perform such duties and functions and exercise such powers as may be provided under this Regulation.
- (2) The conduct of investigation relating to serious injury or threat thereof shall be as prescribed.
- (3) The investigating authority shall be subject to the provisions of the Regulation in performing the functions assigned to it under this Regulation.
- (4) With respect to any proceedings under this Regulation, the investigating authority shall not disclose any information which is entitled to confidential treatment under this Regulation.
- (5) The investigating authority may request directly from the participating interested parties, customs agents, inspection companies, forwarders, and other enterprises and entities of the public and private sectors, such data and information as the investigating authority considers relevant to the performance of its duties, functions and powers. The recipients of such requests shall provide the requested information, and such information shall be placed in the public file.
- (6) The investigating authority may decide to verify the accuracy of any information submitted during an investigation or review as prescribed.

Power to delegate

7. (1) The Minister may, in writing, delegate any of his functions under this Regulation and the regulations made under this Regulation, subject to such conditions, limitations or restrictions as he thinks fit, to a person or class of persons and the person or class of persons to whom those functions are delegated may perform those functions in the manner and with the same effect as if those functions had been conferred on him or them under this Regulation and the regulations made under this Regulation.
- (2) A person or class of persons purporting to Regulation pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (3) A delegation made under this section may at any time be revoked by the Minister.

PART III

DETERMINATION OF SERIOUS INJURY OR THREAT OF SERIOUS INJURY AND CAUSAL LINK

Serious injury

8. (1) In determining whether increased imports have caused serious injury or are threatening to cause serious injury to a domestic industry, the Government shall include the following factors in its evaluation:
 - (a) the rate and amount of the increased imports of the product under investigation in absolute terms and relative to domestic production of like or directly competitive products;
 - (b) the share of domestic market of the product under investigation taken by increased imports of such product;

- (c) the changes in the level of sales, production, profits and losses, productivity, capacity utilisation and employment relating to the domestic industry at the risk of serious injury or threat of serious injury;
 - (d) the factor other than increased imports of the product under investigation which at the same time are causing or threatening to cause serious injury to the domestic industry; and
 - (e) any other factors deemed relevant by the Government.
- (2) The factors referred to in subsection (1) shall not be exhaustive, nor can one or several of such factors be necessarily conclusive.
 - (3) The determination referred to in subsection (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product under investigation and serious injury or threat thereof.
 - (4) When factors other than increased imports of the product under investigation are at the same time causing or threatening to cause injury to the domestic industry, such injury shall not be attributed to the increased imports.

Threat of serious injury

- 9. (1) A determination of a threat of serious injury caused by increased imports shall be based on facts and not merely on allegation, conjecture or remote possibility.
- (2) In determining whether increased in imports threaten to cause serious injury to a domestic industry, the Government shall, in addition to the factors referred to in subsection (1), include the following factors in its evaluation:
 - (a) the actual and potential export capacity of the country of production or origin;
 - (b) any build up of domestic inventory and the inventory of the exporting country;
 - (c) the probability that exports of the product under investigation will enter the domestic market in increasing quantities; and
 - (d) any other factors deemed relevant by the Government.
- (2) The factors referred to in subsection (1) shall not be exhaustive, nor can one or several of such factors be necessarily conclusive.

Causal link

- 10. The determination of serious injury or threat of serious injury to a domestic industry shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of causal link between increased imports of the product under investigation and serious injury or threat of serious injury to a domestic industry.

INVESTIGATION

Petition for initiation of investigation

11. A request for an investigation to determine whether increased imports of the product under investigation have caused or threaten to cause serious injury to a domestic industry may be initiated:

- (a) upon a written petition addressed to the **Ministry** by or on behalf of the domestic industry; or
- (b) on the initiative of the Government.

Requirements for a petition

12. (1) A petition requesting that a safeguard investigation be initiated under section 11(a) of the Regulation shall contain the following information:

- (a) name and address of:
 - (i) the domestic industry on behalf of which the petition is submitted, including the names and addresses of other producers of the like products or directly competitive products in the domestic industry; or
 - (ii) the person or body of persons, whether corporate or unincorporate, who submitted the petition on behalf of the domestic industry;
- (b) a detailed description of the product under investigation that defines the requested scope of the investigation, including its physical, technical and chemical characteristics, the technology and manufacturing process involved, relevant industry specifications, pricing structures, distribution channels, its functions and uses, and its current Mongolian tariff classification;
- (c) a detailed description of the like products or directly competitive products, including its physical, technical and chemical characteristics, the technology and manufacturing process involved, relevant industry specifications, pricing structures, distribution channels, and its functions and uses;
- (d) the information on the trend of the import volume of the product under investigation;
- (e) the volume and value of the product under investigation imported into Mongolia during the most recent three year period and during any other recent period that the petitioner believes to be more representative or if the product under investigation is not imported into Mongolia during the three year period, the information as to the likelihood of the sale for importation into Mongolia of the product under investigation;
- (f) the names and addresses of importers who the petitioner believes are importing or are likely to import;
- (g) any factual information and documentary evidence relevant to the increased imports and serious injury or threat of serious injury to the domestic industry;
- (h) any other factual information which the petitioner relies upon;

- (i) the causal link between the increased imports of the product under investigation and the serious injury or threat of serious injury to the domestic industry;
 - (j) an explanation on unforeseen developments that have resulted in increased imports causing or threatening to cause serious injury to domestic industry;
 - (k) the adjustment plan for the duration of the proposed imposition of definitive safeguard measure and the proposed relief measures allowing domestic industry to recover its competitiveness; and
 - (l) any other information which the Government may request.
- (2) In relation to subsections (1)(e) and (g), a petitioner shall include factual information on all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the product under investigation in absolute and relative terms, share of domestic market taken by increased imports, changes in the level of sales, production, profits and losses, productivity, capacity utilisation and employment.
- (3) If the petitioner fails to provide the information prescribed in subsections (1) and (2), the Government may dismiss the petition.
- (4) The petitioner shall submit to the Ministry with the petition a non-confidential summary of such petition which can be released to public.
- (5) The Government shall not consider any factual information in the petition for which the petitioner requests confidential treatment unless the petitioner complies with section 22 of the Regulation.
- (6) Subject to subsection (7), a petitioner may, within thirty days of initiation of the investigation, make amendments to the petition.
- (7) The Government may refuse any amendment where the Government determines that the amendment would seriously impede or disrupt the investigation.

Withdrawal of the petition before initiation of investigation

13. A petition under section 11 may be withdrawn prior to initiation of an investigation, in which case it shall be considered not to have been made.

Amendments to the petition

14. A petition requesting an investigation to be initiated may be amended subject to such conditions as the Government deems fit.

Decision to initiate investigation

15. (1) The Government may initiate an investigation, whether on the request of a domestic industry or on its own initiative, only when the Government has determined that there is sufficient evidence of serious injury or threat thereof caused by increased imports.
- (2) If the Government decides to initiate an investigation under subsection (1), the Government may seek such additional information, as the Government deems necessary.

- (3) Where the Government decides not to initiate an investigation, the Government shall notify the petitioner in writing of the reasons for not initiating the investigation. Where the Government decides not to initiate an investigation, the petitioner shall be allowed to submit a new petition three months from the date of the notification by the Government of its decision.
- (4) Where a petition has been received, the Government shall, from the date of receipt of the petition, within thirty days from the date of receipt of the petition, make a determination on whether or not to initiate the investigation. The Government may extend the time period by an additional thirty days as the Government thinks fit.

Notice of initiation of investigation

16. The decision to initiate an investigation shall be notified to the Committee. Such notification shall be made immediately after the initiation of the investigation.

Publication of the notice of initiation of investigation

17. The notice of initiation shall be published by the Government. A notice of initiation of an investigation shall contain the following information:

- (a) a complete description of the product under investigation, including its tariff classification;
- (a) a complete description of the like products or directly competitive product;
- (c) the name of the petitioner;
- (d) a summary of the increase in imports of the product under investigation;
- (e) a summary of the factor on which the allegations of serious injury or threat of serious injury is based;
- (f) the address where information requested for and comments may be submitted;
- (g) the date of initiation of the investigation; and
- (h) the time limit for interested parties to make their views known.

Questionnaires

18. (1) The Government may distribute questionnaires to any interested parties within a reasonable period from the date of initiation of investigation for the purposes of making a determination under the Regulation.
- (2) The interested parties shall respond within the time specified in the questionnaires.
- (3) The Government may request for any clarification or additional information relating to the investigation, which shall be in the form of a supplement to the questionnaires, and the interested parties shall respond within the time specified in the request.

Submission of written information

19. (1) Any interested party may submit any information in writing relevant to the investigation or review within a reasonable time for the consideration of the Government.
- (2) Such parties shall provide to the Government five copies of the confidential version of the submission and three copies of the non-confidential version thereof.
- (3) Any document submitted which is in a foreign language shall be accompanied by a translation in the national language or the English language.
- (4) The Government may require submission of factual information on any data storage medium compatible with the computer systems used by the Government as notified by the Government unless the Government is satisfied that such party who submits such information does not maintain records in computerised form or cannot supply the requested information in computer format without unreasonable additional burden in time and expense.
- (5) Where an interested party submits to the Ministry with such information a non-confidential summary of any information, the Ministry may release such information to the public.
- (6) The Government shall not consider any such information for which the party requests confidential treatment unless the party complies with section 22 of the Regulation.

Verification of information

20. (1) Where the Government decides to verify the accuracy of any information submitted during an investigation or review, the Government shall:
 - (a) inform the interested party concerned of its intention to carry out a verification visit;
 - (b) obtain a written agreement of the interested party concerned to the verification visit; and
 - (c) advise the participating interested party concerned of the nature of the information to be verified during the verification visit and any further information that the participating interested party concerned may need to provide during the visit although this should not preclude requests being made during the verification visit for further details to be provided in relation to the information obtained.
- (2) The Government may request access to all files, records and personnel that the Government considers relevant to the investigation or review.
- (3) Where the Government decides that it is impractical to verify relevant factual information for each party due to the large number of the participating interested party, or any other reason, the Government may select and verify samples covering a major proportion of production of the like product or directly competitive product or importation of the product under investigation.
- (4) Where the Government decides not to conduct a verification visit, the Government may request for the interested parties to submit copies of the original documents upon which the information was based or statements from independent auditors as to the accuracy and completeness of the submitted factual information or may use any other methods it deems reasonable.

Public hearings and written arguments

21. (1) All participating interested parties shall have the opportunity in accordance with the provisions of this section:
 - (a) to have public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views; and
 - (b) to respond to a written and oral presentation of other participating interested parties and to submit views as to whether or not the application of a safeguard measure would be in the public interest.
- (2) Any participating interested party may, within thirty days from the date of initiation of the investigation, file a written application for a public hearing addressed to the Minister.
- (3) The Government shall hold the hearing not later than sixty days after receipt of a written application under subsection (2).
- (4) The Government shall decide on the date and time of the hearing within fifteen days from the date of receipt of the written application and shall notify the party of its decision.
- (5) Notwithstanding subsection (2), the Government may hold the hearing on its own initiative.
- (6) Where the Government holds the hearing on its own initiative, it shall notify the participating interested party in advance, and apply the relevant provisions of the Regulations.
- (7) The written application referred to in subsection (2) shall contain the following information:
 - (a) the name, address and relevant information of the participating interested party; and
 - (b) the reason for requesting the hearing.
- (7) The participating interested party shall be present or be represented on such date stated in the notice issued pursuant to subsections (4) or (6), as the case may be, and shall submit a summary of the written presentation and relevant evidence at the hearing.
- (8) The hearing shall be presided over by the Government.
- (9) The Government shall maintain a record of the hearing.
- (10) The hearing may be postponed or cancelled under any one of the following circumstances:
 - (a) where the participating interested party requests for the hearing to be postponed or cancelled;
 - (b) where the investigation for a safeguard measure is terminated; or

- (c) any other reasons the Government thinks fit.
- (11) The Government shall give a notification of the postponement or cancellation of the hearing to the participating interested party.
- (12) Either the national language or the English language shall be used in the hearing.
- (13) Where the hearing involves confidential information, the Government may hold such hearing in such a manner so as to ensure the confidentiality of the information disclosed at the hearing.

Treatment of confidential information

- 22. (1) Any information which is by its nature confidential or which is provided on a confidential basis shall, upon cause shown, be treated as such by the Government. Such information shall not be disclosed without specific written permission from the party submitting the confidential information.
- (2) Parties providing confidential information shall be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided.
- (3) If the Government finds that a request for confidential treatment is not warranted, and if the provider of the information is unwilling to make the information public or to authorize its disclosure in generalized or summary form, the Government may disregard such information unless it can be demonstrated to the Government's satisfaction from appropriate sources that the information is correct.

Preliminary determination

- 23. (1) The Government shall, within ninety days from the date of initiation of investigation, make a preliminary determination regarding:
 - (a) whether the product under investigation is being imported into Mongolia in such increased quantities, absolute or relative to domestic production; and
 - (b) whether under such conditions, it causes or threatens to cause serious injury to the domestic industry that produces like or directly competitive products.
- (2) If the Government makes a negative preliminary determination with regard to subsection (1), the Government shall publish a notice stating the reasons for the negative determination and:
 - (a) continue the investigation; or
 - (b) terminate the investigation if the Government deems fit.

The Government shall continue the investigation unless the Government is satisfied that even if the investigation is continued the elements necessary for the application of safeguard measures are absent.

- (3) A notice of a negative preliminary determination under section 20(2) of the Regulation shall contain the following information:

- (a) a complete description of the product under investigation, including its tariff classification;
 - (b) a complete description of the like products or directly competitive product;
 - (c) the reason for the negative preliminary determination; and
 - (d) a statement indicating whether the investigation will be terminated or continued through the final phase.
- (3) If the Government makes an affirmative preliminary determination with regard to subsection (1), the Government shall continue the investigation and publish a notice of:
- (a) a complete description of the product under investigation, including its tariff classification;
 - (b) a complete description of the like products or directly competitive product;
 - (c) the reason provisional safeguard measure is necessary;
 - (d) the amount of provisional safeguard duty; and
 - (e) the duration of the provisional safeguard measure.
- (4) If the decision is to apply a provisional safeguard measure, the notice regarding the application of a provisional safeguard measure shall be as prescribed.
- (5) If the Government decides not to apply a provisional safeguard measure, the notice of negative preliminary determination shall be as prescribed.
- (6) The Government may extend the time period referred to in subsection (1) by an additional thirty days as the Government thinks fit.
- (7) Where the Government considers that in view of the critical circumstances delay in applying a definitive safeguard measure would cause damage which is difficult to repair, the Government shall make a preliminary determination.

Notification and consultation of a provisional safeguard measure

24. (1) Once a decision has been taken to apply a provisional safeguard measure and before the measure takes effect, the Government shall notify the Committee in conformity with the requirements established by the Committee.
- (2) Before the measure is applied, the opportunity to be consulted as referred to in the Agreement shall be provided.

Provisional safeguard measure

25. (1) The Government may apply a provisional safeguard measure with regard to the product under investigation imported into Mongolia on or after the publication of the notice of affirmative preliminary determination where the Government determines that such measure is necessary to prevent the injury referred to in sections 8 and 9 from occurring during the period of investigation.

- (2) A provisional safeguard measure shall take the form of provisional safeguard duties guaranteed by a bond or security equal to the amount determined by the Government.
- (3) The provisional safeguard measure imposed under this section shall not exceed two hundred days.
- (4) If the subsequent investigation does not result in a determination that increased imports have caused or threaten to cause serious injury to the domestic industry, any bond or security shall be promptly released.
- (5) The collection of any provisional safeguard duties imposed under this Regulation shall be conducted by an officer of customs.

Final determination

26. (1) The Government shall, within two hundred days from the date of application of the provisional safeguard measure, make a final determination regarding:
 - (a) whether the product under investigation is being imported into Mongolia in such increased quantities, absolute or relative to domestic production; and
 - (b) whether under such conditions, it causes or threatens to cause serious injury to the domestic industry that produces like or directly competitive products.
- (2) Where the Government makes a negative final determination with regard to subsection (1), the Government shall:
 - (a) terminate the investigation;
 - (b) terminate the provisional safeguard measure applied under section 22, and release the bond or security required by such measure; and
 - (c) publish a notice of the negative final determination, providing the following information:
 - (i) a complete description of the product under investigation, including its tariff classification;
 - (ii) a complete description of the like products or directly competitive product; and
 - (iii) the reason for the negative final determination.
- (3) Where the Government makes an affirmative final determination with regard to subsection (1), the Government shall:
 - (a) publish a notice of affirmative final determination, which shall state the following:
 - (i) a complete description of the product under investigation, including its tariff classification;
 - (ii) a complete description of the like products or directly competitive product;

- (iii) the factor that has led to the serious injury determination or threat of serious injury determination;
 - (iv) how the increase in imports have caused or threaten to cause serious injury;
 - (v) the amount of definitive safeguard duty or if a quantitative restriction is proposed, the allocation of the quota among the supplier countries, pursuant to section 31 of the Regulation, and an explanation and the relevant information in relation to the basis on which such allocation has been made;
 - (vi) the duration of the definitive safeguard measure;
 - (vii) a timetable for the progressive liberalisation of the definitive safeguard measure if section 38 of the Regulation is applicable; and
 - (viii) the list of the developing countries exempted from the definitive safeguard measure; and
- (b) impose a definitive safeguard measure.
- (4) The Government shall immediately notify the Committee if the Government determines that increased imports have caused or threaten to cause serious injury to the domestic industry. Any such notification shall conform to the requirement established by the Committee.

Notice of final determination

27. The Government shall publish a notice of final determination regarding serious injury and causal link.

PART V

DEFINITIVE SAFEGUARD MEASURE

Determination of definitive safeguard measure

28. Where the Government determines during a provisional safeguard measure that:
- (a) the product under investigation is being imported into Mongolia in such increased quantities, absolute or relative to domestic production; and
 - (b) under such conditions, it causes or threaten to cause serious injury to the domestic industry that produces like or directly competitive products,

The Government shall apply a definitive safeguard measure.

Notice of definitive safeguard measure

29. Immediately upon taking a decision regarding the application of a definitive safeguard measure, the Government shall publish a notice regarding application of a definitive safeguard measure, and such notice shall contain information as prescribed.

Notification and consultation of a definitive safeguard measure

30. (1) Immediately upon a decision to apply a definitive safeguard measure, but before such measure takes effect, the Government shall notify the Committee regarding:
- (a) the evidence of serious injury or threat thereof caused by increased imports;
 - (b) the precise description of the product under investigation;
 - (c) the form, level and duration of the proposed measure;
 - (d) the proposed date of application of the measure; and
 - (e) the proposed date of introduction, expected duration and timetable for progressive liberalization.
- (2) Before a definitive safeguard measure is applied, the Government shall provide adequate opportunity for consultation with those Members having a substantial interest as exporters of the product under investigation, with a view to:
- (a) reviewing the information notified to the Committee regarding the finding of serious injury or threat thereof caused by increased imports and the proposed measure;
 - (b) exchanging views about the measure; and
 - (c) reaching an understanding on ways to achieve the objective to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Mongolia and the exporting Members which would be affected by such a measure. The Government may endeavour to provide any adequate means of trade compensation for the adverse effects of the measure on their trade.
- (3) The Government shall notify the Council for Trade in Goods of the WTO immediately, through the Committee, of the results of the consultation.

Form and application of a definitive safeguard measure

31. (1) A definitive safeguard measure can be applied in the form of:
- (a) a safeguard duty; or
 - (b) a quota on imports; or
 - (c) a safeguard duty and a quota on imports.
- (2) Subject to section 36, any definitive safeguard measure under paragraphs (1)(a) and (b) shall be applied to all imports of the product under investigation, irrespective of source, entered on or after the date on which the measure takes effect.

Administrative matters

32. (1) Any petition to be submitted under Part IV shall be submitted to the **Ministry**.
- (2) Subject to the provisions of this Regulation, any action to be conducted or taken under this Regulation shall be conducted or taken by any officer or person authorized in writing in that behalf by the Minister.

- (3) Any finding of an investigation, whether for the purpose of a preliminary or final determination, or a review, under this Regulation, shall be forwarded to the Minister.
- (4) The Minister shall decide and such decision shall be final.
- (5) The Minister shall make a recommendation to the **Minister of Finance** to impose a definitive safeguard measure.
- (6) The implementation of a definitive safeguard measure in the form as provided in section 31(1) shall be conducted by an officer of customs.
- (7) If any question arises as to whether any particular product is or is not included in any notification given under this Regulation, such question shall be referred to the investigating authority who shall make a decision on the matter.

Transshipment

33. In cases where products are not imported into Mongolia directly from the country of origin, but are exported to Mongolia from an intermediate country, the provisions of the Regulation shall be fully applicable and the transaction, for the purposes of this Regulation, shall be regarded as having taken place between the country of origin and Mongolia.

Customs clearance not to be hindered

34. Any investigation conducted under this Regulation shall not hinder procedures for customs clearance.

Application of the Customs Regulation

35. (1) This Regulation shall be construed as one with the Customs Regulation.
- (2) If there is any inconsistency between the provisions of the Customs Regulation and the provisions of this Regulation, the provisions of this Regulation shall prevail.

Developing Country Member

36. (1) Notwithstanding any other provisions of this Regulation, a definitive safeguard measure shall not be applied against the product under investigation originating in a developing country Member as long as its share of imports of the product concerned in Mongolia does not exceed three per cent of total imports of the product concerned, provided that developing country Members with less than three per cent import share collectively account for not more than nine per cent of total imports of the product concerned.
- (2) An action taken pursuant to subsection (1) must be notified to the Committee.

Duration of a definitive safeguard measure

37. (1) A definitive safeguard measure shall be applied for a period of not more than four years unless it is extended as provided for in section 40.
- (2) The total duration of a definitive safeguard measure, including the period of application of any provisional safeguard measure and any extension thereof pursuant to section 40, shall not exceed ten years, in accordance with the provisions of the Agreement.

Liberalization of safeguard measure

38. Where the period of application exceeds one year, the measure applied shall be progressively liberalized at regular intervals during the period of application.

PART VI

REVIEW OF SAFEGUARD MEASURE

Review

39. (1) If the duration of a definitive safeguard measure, including the period of application of any provisional safeguard measure, exceeds three years, the Government applying such a measure shall review the situation not later than the mid-term of the application of the measure or increase the pace of liberalization.
- (2) The Government may request from interested parties any information the Government thinks necessary.
- (3) A review shall be completed within one hundred and eighty days from the date of initiation of the review.
- (4) A notice to maintain, liberalize or withdraw a definitive safeguard measure, summarizing the results of the review, may be published.

Request for extension by or on behalf of domestic industry

40. (1) A request for an extension of a definitive safeguard measure shall be submitted to the Ministry not later than eight months prior to the expiry of the measure.
- (2) A request under subsection (1) shall contain the following information:
- (a) the name and address of:
- (i) the domestic industry on behalf of which the petition is submitted, including the names and addresses of other producers of the like products or directly competitive products in the domestic industry; or
- (ii) the person or body of persons, whether corporate or unincorporate, who submitted the petition on behalf of the domestic industry;
- (b) a detailed description of the product under investigation that defines the requested scope of the investigation, including its physical, technical and chemical characteristics, the technology and manufacturing process involved, relevant industry specifications, pricing structures, distribution channels, functions and uses and its current Mongolian tariff classification, if there is any change;
- (c) a detailed description of the like products or directly competitive products, including its physical, technical and chemical characteristics, the technology and manufacturing process involved, relevant industry specifications, pricing structures, distribution channels, its functions and uses, if there is any change;

- (d) the information on the trend of import volume of the product under investigation;
 - (e) the volume and value of the product under investigation imported into Mongolia during the imposition of the definitive safeguard measure;
 - (f) the information as to the likelihood of the sale for importation into Mongolia of the product under investigation, if the product under investigation is not imported into Mongolia;
 - (g) any factual information and documentary evidence relevant to the increased imports and serious injury or threat of serious injury to the domestic industry;
 - (h) the names and addresses of importers who the petitioner believes are importing or are likely to import, if there is any change on the information;
 - (i) the causal link between the increased imports of the product under investigation and the serious injury or threat of serious injury to the domestic industry;
 - (j) the evidence of adjustment made by the industry;
 - (k) the adjustment plan and relief measures for the proposed duration of the extension of definitive safeguard measure to allow domestic industry to recover its competitiveness;
 - (l) any other factual information which the petitioner relies upon; and
 - (m) any other information which the Government may request.
- (3) In relation to subsections (2)(e) and (g), a petitioner shall include factual information on all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the product under investigation in absolute and relative terms, share of domestic market taken by increased imports, changes in the level of sales, production, profits and losses, productivity, capacity utilisation and employment.
- (4) If the petitioner fails to comply with subsections (2) and (3), the Government may disregard the request for extension.
- (5) The petitioner shall submit to the Ministry with the request for extension a non-confidential summary of such request, which can be released to public.
- (6) The Government shall not consider any factual information in the request for extension for which the petitioner requests confidential treatment unless the petitioner complies with section 2 of the Regulation.
- (7) Subject to subsection (8), a petitioner may, within thirty days of initiation of the review, make amendments to the request for extension.
- (8) The Government may refuse any amendment where the Government determines that the amendment would seriously impede or disrupt the investigation.

Extension of a definitive safeguard measure

41. (1) Upon the Government's own initiative or upon duly substantiated request, an extension of a definitive safeguard measure beyond the initial period and in conformity with the procedures set out therein may be granted:
- (a) if the safeguard measure continues to be necessary to prevent or remedy serious injury; and
 - (b) there is evidence that the industry is adjusting, provided that the provisions of the Agreement are fulfilled.
- (2) An extended definitive safeguard measure shall not be more restrictive than at the end of the initial period of application. During the extension period, the measure shall continue to be progressively liberalized in accordance with the schedule published in a notice to extend a definitive safeguard measure.
- (3) In extending a definitive safeguard measure exceeding three years, the Government shall endeavour to maintain a substantially equivalent level of concessions and other obligation to that existing under GATT 1994 between Mongolia and the exporting Members, which would be affected by such measure.
- (4) The requirements pertaining to notification to the Committee and to the WTO Council for Trade in Goods, and the requirements pertaining to consultations with those Members having a substantial interest as exporters of the product concerned shall apply to any extension of a safeguard measure.

Notification to extend

42. Once a decision has been taken to extend the safeguard measure, the Government shall notify the Committee.

PART VII

REAPPLICATION OF A SAFEGUARD MEASURE

Reapplication

43. (1) No new safeguard measure shall be applied for a period of at least two years to imports of a product, which were the subject of a definitive safeguard measure.
- (2) Notwithstanding the provisions of subsection (1), a definitive safeguard measure with a duration of hundred and eighty days or less may be applied to the imports of a product under investigation which was the subject of an earlier safeguard measure if:
- (a) at least one year lapsed since the date of imposition of the earlier safeguard measure on the imports of that product; and
 - (b) such a safeguard measure has not been applied on the same product more than twice in the five year period immediately preceding the date of introduction of the measure.

PART VIII

MISCELLANEOUS

International obligations

44. This Regulation shall be applied in conformity with the obligations of Mongolia under the Agreement Establishing the World Trade Organization, done at Marrakesh, on 15 April 1994, including the GATT 1994, and the Agreement on Safeguards.

Bilateral safeguards

45. (1) Nothing in this Regulation shall prevent the Government from initiating safeguard investigation and imposing safeguard measure in accordance with the terms and conditions agreed upon in a trade agreement entered into by the Government.
- (2) The Minister shall prescribe the terms and conditions of the safeguard investigation and safeguard measure for the purpose of subsection (1).

Publication of notices

46. All notices required to be published under this Regulation shall be published.