

The Safeguard on Increased Imports Law
(The Pyidaungsu Hluttaw Law No. 35, 2019)
The 13th Waning Day of Nadaw, 1381 M.E.
(24 December 2019)

The Pyidaungsu Hluttaw hereby enacts this Law.

Chapter I

Title, Enforcement and Definitions

1. (a) This Law shall be called **the Safeguard on Increased Imports Law**.
(b) This Law shall come into force on the date specified by the President, by notification.
2. The following expressions in this Law shall have the same meanings given below:
 - (a) **Committee** means the Safeguard on Increased Imports Committee formed under this Law;
 - (b) **Ministry** means the Ministry of Commerce of the Union Government;
 - (c) **Department** means the Department assigned by the Ministry to undertake the matters pertaining to a safeguard measure;
 - (d) **Investigating Body** means the body formed and assigned by the Committee to carry out the functions of this Law;
 - (e) **Increased imports** means the increased quantity of any kind of product imported into the country, either absolute or relative to the domestic production of the like or directly competitive product;
 - (f) **Safeguard measure** means the measure to be applied for prevention and remedy if the increased quantity of a product imported into the country causes or threatens to cause serious injury to the domestic industry that produces the like or directly competitive product. This expression also includes the imposition of the provisional safeguard duty, safeguard duty or quantitative restriction on imports;
 - (g) **Provisional safeguard duty** means a temporary additional duty including the customs duty imposed under the Tariff Law to prevent and remedy serious injury or threat thereof to the domestic industry during the period of investigation;

- (h) **Safeguard duty** means an additional duty for a certain period of time including the customs duty imposed under the Tariff Law to prevent and remedy serious injury or threat thereof to the domestic producers according to the final decision on the completion of investigation;
- (i) **Quantitative restriction on imports** means a restriction on the importation of quantity of the investigated product for a certain period of time to prevent and remedy serious injury or threat thereof to the domestic producers according to the final decision on the completion of investigation;
- (j) **Domestic industry** means:
- (i) a domestic producer of the like or directly competitive product;
 - (ii) a domestic producer of the like or directly competitive product constituted a major proportion of the product;
- (k) **Serious injury** means a significant overall impairment in the position of the domestic industry;
- (l) **Like product** means a domestically produced product which is identical or closely resembles the investigated product;
- (m) **Directly competitive product** means a domestically produced product that serves as a substitute and is directly competitive with the investigated product in terms of its utility purpose or commercial competitiveness in the market, despite differences in chemical composition or other technical or physical characteristics;
- (n) **Investigated product** means the imported product investigated under this Law;
- (o) **Interested parties** means:
- (i) the foreign exporter or foreign producer of the investigated product;
 - (ii) the importer of the investigated product;
 - (iii) the trade and business association comprising a majority of the members in clause (i) or (ii);
 - (iv) the government of the country exporting the investigated product;
 - (v) the domestic producer;
 - (vi) the trade and business association formed with domestic producers;

- (p) **Developing country** means a country in the list of developing countries designated by the United Nations.

Chapter II

Objectives

3. The objectives of this Law are:

- (a) to conduct a systematic investigation if the increased imports of a product have caused or threatened to cause serious injury to domestic producers;
- (b) to support the competitiveness of domestic producers within a period of time;
- (c) to apply the sufficient safeguard measures on the imports for prevention and remedy for an injury if the causal link exists between such injury or threat of injury and the increased imports.

Chapter III

Formation of the Safeguard on Increased Imports Committee and its Functions

4. The Union Government:

- (a) shall form the Safeguard on Increased Imports Committee with the following persons comprising not more than 15 persons:

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|-------|---|------------------|
| (i) | Union Minister
Ministry of Commerce | Chairperson |
| (ii) | Deputy Minister
Ministry of Planning, Finance and Industry
Persons not lower than the position of Director General from | Vice-Chairperson |
| (iii) | the relevant government departments or government organizations | Members |
| (iv) | An appropriate international trade economist | Member |
| (v) | An appropriate international trade legal expert | Member |
| (vi) | President of the Union of Myanmar Federation of Chambers of Commerce and Industry | Member |
| (vii) | Director General of the Department | Secretary |

- (b) may appoint the joint-secretary in forming the Committee under subsection (a);
- (c) may re-form the Committee formed under subsection (a).

5. The functions and powers of the Committee are:

- (a) to decide whether the initiation of investigation conducted by the Department should be investigated regarding the application of safeguard measures;
- (b) to form and assign the Investigating Body to conduct investigation and make recommendations;
- (c) to make a decision on the appropriate safeguard measure after scrutinizing the findings and recommendations submitted by the Investigating Body through the Department;
- (d) to obtain the approval of the Union Government for the decision on the safeguard measure;
- (e) to implement safeguard measures without delay;
- (f) to advise the Ministry for the effective implementation of this Law;
- (g) to request necessary statistics, information and evidence from the relevant government departments and government organizations or interested parties for the implementation of this Law;
- (h) to delegate any of its power to the Department or Investigating Body;
- (i) to form and assign working committees if necessary.

Chapter IV

Duties and Powers of the Department

6. The duties and powers of the Department are:

- (a) to submit the application of a safeguard measure to the Committee after scrutinizing whether it is fulfilled the required documents;
- (b) to supervise the Investigating Body;
- (c) to report the findings and recommendations of the Investigating Body to the Committee;
- (d) to arrange for holding the meeting of the Committee to determine the investigation results as soon as possible;
- (e) to maintain the statistics, information and evidence requested from the relevant government departments and government organizations or interested parties;
- (f) to undertake all office works of the Committee and Investigating Body;

(g) to perform the duties assigned by the Committee from time to time.

Chapter V

Initiation of Investigation

7. A domestic producer or his agent who has been caused or threatened to cause serious injury for increased imports shall apply to the Committee to investigate for prevention and remedy in accordance with specifications. The Committee shall assign to the Department for initiation of investigation of the application.
8. The Department shall initially scrutinize whether the application is fulfilled the required documents, and submit it to the Committee, within five working days from the date of receipt of the application.
9. On the submission under section 8, the Committee shall:
 - (a) direct the applicant to amend and resubmit the complete application if it is not fulfilled the required documents;
 - (b) decide whether or not to conduct investigation.
10. If the Department directs the applicant to amend and resubmit the application for investigation, the applicant shall complete and resubmit the application within the prescribed period.
11. If the Committee directs that it decides not to conduct investigation, the Department shall notify the applicant in writing as soon as possible.

Chapter VI

Investigation

12. If the Committee decides to conduct investigation, it shall form the Investigating Body with Department staff proficient in the subject matter or with experts from the relevant government departments and organizations led by the Department staff proficient in the subject matter.
13. The Investigating Body shall:
 - (a) conduct investigation from the date assigned to it;
 - (b) inform the interested parties including the applicant for the initiation of such investigation.

14. The Investigating Body may request the necessary statistics, information and evidence, in conducting the investigation, from the relevant government departments and government organizations or interested parties with the approval of the Committee.
15. The Investigating Body may ask questions, hear or carry out other appropriate means to the interested parties in conducting the investigation.
16. The Investigating Body shall submit the findings of preliminary determination during the period of investigation or final determination after investigation to the Committee through the Department within the period prescribed by the Committee.
17. The Investigating Body shall treat the secret of business, and statistics, information and evidence related to such secret in conducting the investigation as confidential basic.
18. The Committee, Department and Investigating Body shall not disclose the confidential statistics, information and evidence except for the implementation of the objectives of this Law without the approval of the relevant person.
19. If the relevant person submits statistics, information and evidence to be confidential, the Investigating Body shall request to submit the non-confidential summaries that enable comprehensive understanding of the issue, and indicate the reasons why a summary cannot be provided to the relevant person if such information cannot be summarized.
20. The Investigating Body may disregard any of the following statistics, information and evidence, in conducting the investigation:
 - (a) statistics, information and evidence that confidentiality is not warranted;
 - (b) statistics, information and evidence submitted in the form of non-confidential summary which are not permitted by the relevant person to make the information public.

Chapter VII

Determination of Serious Injury and Imposition of Provisional Safeguard Duty

21. The Investigating Body shall, in determining whether increased imports have caused or threatened to cause serious injury to the domestic industry, evaluate other necessary factors related to such industry including the following factors:
 - (a) the amount and rate of the increased imports;
 - (b) the share of the domestic market taken by increased imports of the product;

- (c) the changes in the level of sales;
 - (d) the changes in the level of production;
 - (e) the changes in the level of productivity;
 - (f) the changes in the level of profits and losses;
 - (g) the changes in the level of employment.
22. The Investigating Body shall determine and submit that the increased imports have caused or threatened to cause serious injury to the domestic industry only if the existence of the causal link between the serious injury or threat thereof to the industry and the increased imports can be demonstrated.
23. If the Investigating Body finds that factors other than the increased imports are causing or threatening to cause injury to the domestic industry, it shall not attribute and submit such injury to the increased imports.
24. If the Investigating Body finds that there are critical circumstances where the damage to domestic industry would be difficult to repair under the preliminary determination, it shall report the imposition of the provisional safeguard duty on the product imported within the period under investigation to the Committee through the Department.
25. The Committee may:
- (a) decide the imposition of the provisional safeguard duty under section 24 before the final decision;
 - (b) allow the imposition of the provisional safeguard duty up to a maximum of 200 days.

Chapter VIII

Determination and Application of Safeguard Measures

26. The Investigating Body shall submit the findings of final determination with recommendations to the Committee through the Department after investigation within the prescribed period.
27. If the Committee finds that there are neither increased imports nor serious injury or threat thereof under the final determination, it shall decide to terminate the imposition of the provisional safeguard duty.
28. If the Committee finds that there are increased imports and the increased imports have caused or serious injury or threatened to cause serious injury under the final

determination, it may decide to apply one or more of the following safeguard measures on the investigated products:

- (a) imposition of a safeguard duty;
- (b) quantitative restriction on imports.

29. The Committee shall determine only the extent necessary to facilitate and adjustment plan by the domestic industry and to prevent and remedy their injury in determination of the safeguard measure under section 28.

30. The Committee shall not determine the amount less than average imports level based on the lists imported in the last three years regarding the investigated products where determining quantitative restriction on imports under subsection (b) of section 28. Provided that the amount less than average imports quantity may be determined where the sufficient justification to prevent and remedy for serious injury or threat thereof is found.

31. The Committee shall:

- (a) allocate the import quota for each country where more than one country exports the investigated product;
- (b) attempt to reach agreement with those countries having substantial interests in supplying the product into the country, in allocating under subsection (a).

32. The Committee shall restrict and allocate the amount based on the proportion of the aggregate quantity or value of the imports of that product from such countries into the country in the last three years where no agreement is reached for the allocation of imports under section 31.

33. The Committee shall not apply the safeguard measure where the investigated product is imported from the developing country into the country and they meet any of the following factors:

- (a) the share of imports from a developing country does not exceed three percent of the total imports quantity of that product into the country;
- (b) if imports from developing countries which individually account for less than three percent share of total import quantity of the product collectively account for not more than nine percent of total imports quantity of that product into the country.

34. If the Committee makes any of the following decision on the provisional safeguard duty collected under this Law, the relevant government department and organization shall, without delay:
- (a) decide to refund the differential amount where the safeguard duty imposed after the final determination is less than the provisional safeguard duty already imposed and collected;
 - (b) decide to refund the provisional safeguard duty collected on the termination of imposition of the provisional safeguard duty under section 27.

Chapter IX

Notification and Request for Information

35. The Department shall notify the applicants and interested parties with the relevant facts, and publicize the following decision of the Committee within the specified period:
- (a) deciding whether or not to conduct investigation, and deciding to initiate investigation in case of making decision to conduct the investigation;
 - (b) deciding on terminational and suspension of investigation;
 - (c) preliminary determination;
 - (d) decision to impose the provisional safeguard duty;
 - (e) final decision on application, extension or termination of a safeguard measure;
 - (f) decision on the results of review.
36. The Committee shall notify the World Trade Organization through the Ministry without delay of the decision to initiate investigation and the final decision regarding the application, extension or termination of a safeguard measure.
37. The Committee may, if necessary, request information and evidence pertaining to the investigation from the exporter, producer, association and government of the relevant country through the Ministry by the embassy of the relevant country or by any other means which are agreed among the relevant countries.
38. The exporters, producers and interested parties shall provide information and evidence within 30 days from the date of receipt of the notice requested under section 37 or within the extension period permitted by the Committee.

39. The interested parties shall provide confidential statistics, information and evidence requested to be presented by the Investigating Body in the summary form. If they cannot provide them as such, the sufficient reason shall be furnished.

Chapter X

Duration, Liberalization and Review of Safeguard Measures

40. The duration of the safeguard measure under section 28 shall be only the period necessary to prevent or remedy the injury to the domestic industry, and to facilitate positive adjustment.

41. In applying the safeguard measure:

- (a) the initial application period of the safeguard measure on a product shall not exceed four years;
- (b) the maximum period of the safeguard measure in subsection (a) including the extension period of the product shall not exceed ten years;
- (c) if the new safeguard measure shall be applied again on the import of the product has been applied, it may be re-applied only at least two years had elapsed after the expiration of the previous safeguard measure.

42. The domestic industry shall:

- (a) apply to the Committee for the extension of the safeguard measure applied under section 28 at least six months prior to the expiry of the initial period. The copy of application shall be sent to the Department;
- (b) present the evidence for facilitation of positive adjustment, in applying under subsection (a), in accordance with specifications.

43. The Investigating Body shall determine as to whether the extension should be granted or not in accordance with this Law, and submit it to the Committee.

44. The Committee may extend the period of the safeguard measure on the application under section 42. The measure applied within the extension period shall not be more restrictive than the measure presently being applied.

45. The Committee may apply the safeguard measure again for a maximum of 180 days or less on the import of a product, if:

- (a) at least one year has elapsed since the date of the introduction of a safeguard measure on the investigated product;
 - (b) it has not been applied on the same product more than twice in five years from the date of application of the safeguard measure.
46. The Committee may liberalize progressively the application of the safeguard measure in case of the duration of the safeguard measure applied under section 29 exceeds one year.
47. The Investigating Body shall conduct periodic reviews, or, in the case of measures that exceed three years, conduct reviews no later than the mid-term of such period, and report to the Committee through the Department to maintain, liberalize or withdraw the imposition of such safeguard measure.
48. If the Committee decides to maintain or liberalize or withdraw the safeguard measure, the Ministry shall issue notification or directive for such decision as soon as possible, and notify the government departments and interested parties including the Customs Department.
49. In applying the safeguard measure under section 25 or 29 except the concessions granted to the developing countries, the import of products originating from any country shall have effect to maintain substantially equivalent level of concessions on safeguard measures.

Chapter XI

Miscellaneous

50. The interested parties under this Law are entitled to submit the relevant evidence during the period of investigation in accordance with the procedures prescribed by the Committee whether the matter investigated is the public interests.
51. The Committee shall reject false and incorrect statistics, information and evidence submitted by the interested parties, and may take appropriate action against such submission.
52. In applying the safeguard measures, the Ministry of Planning, Finance and Industry shall impose the provisional safeguard duty on imports, and the Ministry shall make quantitative restriction on imports in accordance with the rules, regulations, by-laws, notifications, orders, directives and procedures issued under this Law.

53. The interested party included in investigation is entitled to appeal to the Tax Appellate Tribunal for review of the appeal in accordance with the law within 30 days from the date of notice of imposition of the provisional safeguard duty and safeguard duty.
54. The Committee shall direct the relevant department for implementation of the decision of the Tax Appellate Tribunal.
55. The relevant Tax Law and Tariff Law, regulations, by-laws and procedures shall be applied for the imposition of a duty under subsection (a) of section 25 and subsection (a) of section 28, and refunding a duty under section 34.
56. The Ministry shall manage the persons who implement this Law to learn the legal knowledge and know-how.
57. The Ministry may prescribe and collect the cost or fee from the applicant for the investigation and review process by issuing the order or notification.
58. The Ministry shall assign the Department for undertaking the office works of the Committee and Investigating Body.
59. The Ministry shall bear the costs of the Committee and Investigating Body from the expenditure of the Ministry.
60. The Ministry shall prescribe remuneration and allowance of the members of the Committee who are non-civil servants with the approval of the Union Government.
61. In implementing the provisions of this Law:
- (a) the Ministry may issue necessary rules, regulations and by-laws with the approval of the Union Government;
 - (b) the Ministry, the Ministry of Planning, Finance and Industry, and the Committee may issue necessary notifications, orders, directives and procedures.
- I hereby sign in accordance with the Constitution of the Republic of the Union of Myanmar.

Sd./ Win Myint

President

Republic of the Union of Myanmar