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ISLAMIC REPUBLIC OF AFGHANISTAN

| MINISTRY OF COMMERCE AND INDUSTRY ~~YES~~

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(DRAFT) LAW ON SAFEGUARD MEASURES FOR DOMESTIC  
PRODUCTION

| 20132 (13921)

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CHAPTER I: GENERAL PROVISIONS

## Legal Basis

### Article 1

This Law is enacted pursuant to the provisions of Articles 10 and Article 13 of the Constitution of the Islamic Republic of Afghanistan.

### Objectives

### Article 2



- (ix) industrial users of the investigated product; and
- (x) any other natural or legal person which the Board determines to have a sufficient interest in the outcome of the investigation.

(8)(9) participating interested parties

- (c) to cooperate with the Customs General Directorate, and such other government authorities and relevant non-governmental entities as may be involved in the implementation of remedies and procedures specified under this Law;
- (d) to adopt its own internal rules and working procedures; and
- (e) to set the fees payable for the reception and processing of applications for the initiation and conduct of a safeguards investigation in accordance with approved regulations.

## Office Board Composition and Management

### Article 7

1. The Office Board shall be made up of five (5) Managing Members appointed for a period of four (4) years. The Members may be appointed and confirmed for subsequent terms of four years.
2. The Chief Executive Officer of the Office Board shall hold the title of "President." The President shall be an official of the Ministry of Commerce and Industry and shall be appointed based on his or her qualifications by the Minister of Commerce and Industry. The presidency shall be a full-time position.
3. The four remaining Managing Members shall be comprised of one representative from each of the following organizations: the Ministry of Foreign Affairs; the Ministry of Agriculture Irrigation and Livestock; the Ministry of



| 2. The President of the ~~Office Board~~ may not discharge any other public or private functions, except those of an honorary or academic nature.

2. The investigation must demonstrate, based on objective evidence, a causal link between the increased imports and the serious injury or threat of serious injury. When factors other than increased imports of the investigated product 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 and Causation



- (x) a statement giving specific reasons for seeking application of a safeguard measure, for example, to facilitate the orderly transfer of resources to more productive uses, to improve competitiveness or to adapt to new conditions of competition, together with the type and level of the measure considered necessary to ensure the achievement of the objectives pursued;
- (xi) a plan for adjusting the domestic industry to competition from imports; and
- (xii) if a provisional measure is sought, information regarding critical circumstances where delay in taking action would cause damage to the industry which it would be difficult to repair, and a statement indicating the level of tariff increase requested as a provisional measure.

#### Withdrawal of the Request before Initiation

#### Article 15

Any request under Article 14 may be withdrawn prior to initiation, in which case it

## Public Notice and Notification Regarding Initiation

### Article 17

1. Immediately after taking a decision regarding initiation, whether affirmative or negative, the Office-Board shall provide direct written notice of that decision to the known exporting countries, and shall notify interested parties through the publication of a Notice Regarding Initiation of a Safeguard Investigation in a prominent national newspaper news medium. The date of initiation of an investigation shall be the date of such publication.

2. Interested parties desiring to participate in the investigation shall have a period of 21 working days from the date of initiation to indicate to the Office-Board in writing their interest in participating in the investigation. The Office-Board may allow interested parties to indicate their interest in participating in the investigation after this date, upon cause shown.

3. The decision to initiate an investigation shall be notified to the Safeguards Committee. Such notification shall be made immediately upon the initiation of the investigation, and shall conform to the requirements established by the Committee.

## Contents of the Notice Regarding Initiation of a Safeguard Investigation

### Article 18

1. The Notice Regarding Initiation of a Safeguard Investigation shall include the following information:

- (i) a complete description of the investigated product, including its technical

- (ix) whether or not application of a provisional measure will be considered;
- (x) the proposed schedule for the investment will be considered;

the submission of responses to questionnaires and other requests by the ~~Office Board~~ for information, for the preparation and submission of other evidence deemed relevant by participating interested parties, and for the submission of participating interested parties' views, including with respect to the views and presentations of other participating interested parties and with respect to whether or not application of a safeguard measure would be in the national interest.

## Section II: Conduct of the Investigation

### Investigative Powers

#### Article 20

1. The ~~Office Board~~ 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 it considers relevant to the performance of its task. The recipients of such requests shall provide the requested information within the time-limits allowed.
2. The ~~Office Board~~ may conduct on-the-spot investigations to verify or obtain further details concerning the information provided. ~~When~~ such investigations are conducted, the ~~Office Board~~ shall prepare a report describing the findings of the verification. This verification report, with the exception of a confidential information, shall be placed promptly in the public file.

### Treatment of Confidential Information

#### Article 21

1. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause shown, be treated as such by the ~~Office Board~~. Such information shall not be disclosed without permission of the submitter. Persons providing confidential information shall furnish adequate non-confidential summaries thereof of any confidential information in sufficient detail to provide interested parties with a clear understanding of the facts under consideration. If such persons indicate that such information cannot be summarized, the reasons why a summary cannot be provided be submitted in writing The requirement of the submitting party to provide non-confidential summaries shall apply among others to written submissions by the petitioners or interested parties, such as the original complaint
2. If the ~~Office Board~~ 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 at minimum to authorize disclosure of a non-confidential summary that provides a reasonable understanding of the confidential information, then the ~~Office Board~~ shall disregard such information, and shall return the information concerned to the person submitting it.
3. The Board shall ensure that adequate confidential summaries of any confidential information are made available to interested parties. However, the Board shall take into account the legitimate requirements of interested parties that business secrets or other confidential information shall not be divulged.

## Written Arguments

### Article 22

1. All participating interested parties shall have the opportunity, in accordance with the provisions of this Article, to present evidence and arguments in writing, including responses to the written and oral presentations of other participating interested parties and views as to whether or not application of a safeguard measure would be in the national interest.

2. In an investigation in which application of a provisional safeguard measure will be considered, any participating interested party may submit written arguments concerning any matter it considers relevant to the preliminary phase of the investigation. Such written arguments shall be submitted within the deadline for written comments specified in the notice



4. Hearings shall be presided over by the president of the ~~Office Board~~ or another managing Member nominated by the president. ~~The Office Board~~ shall ensure that confidentiality is preserved and shall organize hearings in a manner that ensures that all participating interested parties have an adequate opportunity to present their views.

5. The ~~Office Board~~ shall maintain a record of the hearing, which shall be promptly placed in the public file, with the exception of any confidential information.

#### Public File and Access Thereto

#### Article 24

1. The ~~Office Board~~ shall establish and maintain a public file relating to each investigation or other proceeding conducted under this Law. Subject to the provisions of Article 21 for the protection of confidential information, the ~~Office Board~~ shall promptly place in the public file non-confidential or public versions of:

- (a) ~~the written request for the initiation of an investigation;~~
- (b) all written determinations and public notices relating to the investigation;
- (c) responses to questionnaires;
- (d) all written arguments and submissions by interested parties;
- (e) all other information developed or obtained by the ~~Office Board~~ including any verification report(s) prepared pursuant to Article 20;
- (f) the record of any hearing conducted pursuant to Article 23; and
- (g) any other document the ~~Office Board~~ considers appropriate for public disclosure.

2. Upon request, interested parties shall be permitted to inspect the public file throughout the investigation. Interested parties may review and copy documents in the public file maintained by the ~~Office Board~~.

#### Reliance on Best Information Available

#### Article 25

1. If, at any time during the investigation, any participating interested party:

- (a) refuses access to, or otherwise does not provide, necessary information within the period of time prescribed by the ~~Office Board~~; or
- (b) otherwise significantly impedes the investigation;

the ~~Office Board~~ may make determinations on the basis of the best information available.

2. The ~~Office-Board~~ shall take into account any difficulties experienced by participating interested parties, including small companies, in supplying information requested. ~~The Board~~ shall provide any assistance reasonably ~~practicable~~ and/or may extend the time period prescribed for the submission of any information.

## CHAPTER V: APPLICATION OF SAFEGUARD MEASURES

### Section I: Provisional Safeguard Measures

#### Application of a Provisional Safeguard Measure

##### Article 26

1. A provisional safeguard measure may be applied only if ~~the Board~~ determines:
  - (a) that there are critical circumstances, i.e. that delay in taking action would cause damage which would be difficult to repair; and
  - (b) that there is clear evidence that increased imports of the investigated product have caused or are threatening to cause serious injury.
2. A provisional safeguard measure shall ~~take~~ the form of tariff increases to be automatically refunded as soon as possible if the subsequent investigation does not determine that increased imports have caused or ~~threatened~~ to cause serious injury to the domestic industry.

#### Notice Regarding the Application of a Provisional Safeguard Measure

##### Article 27

1. Immediately upon taking a decision ~~regarding~~ the application of a provisional safeguard measure, ~~the Office-Board~~ shall within 5 working days publish a Notice Regarding the Application of a Provisional Safeguard Measure in a prominent national newspaper/news medium.
2. If the decision is to apply a provisional safeguard measure, the Notice Regarding the Application of a Provisional Safeguard Measure shall include the following information:
  - (a) a complete description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
  - (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 the investigated product;

- (e) a summary of the unforeseen developments that led to the increase in imports of the investigated product, or to the change in the conditions under which such imports occur;
- (f) 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 the investigated product have caused or are threatening to cause serious injury;
- (g) the amount of tariff increase proposed as the provisional safeguard measure; and
- (h) the intended duration of the provisional safeguard measure.

3. If the ~~Office-Board~~ decides not to apply a provisional safeguard measure, the Notice Regarding the Application of a Provisional Safeguard Measure shall include the following information:

- (a) a complete description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
- (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 the investigation will be terminated at that point, or continued through the final phase.

## Notification and Consultations

### Article 28

After a decision has been taken to apply a provisional safeguard measure, and before the measure takes effect, the Government of Afghanistan shall immediately notify the ~~WTO~~ Safeguards Committee with all pertinent information in conformity with the requirements established by the Committee. As soon as the measure has been adopted, the consultations referred to in Article 12.4 of the ~~WTO~~ Safeguard Agreement shall be initiated.

## Duration of a Provisional Safeguard Measure

### Article 29

A provisional safeguard measure shall ~~be~~ applied for no more than 200 days and may be suspended before its date of expiration by decision of ~~the~~ Office-Board.

## Payment and Refund of a Provisional Safeguard Measure

### Article 30

1. The amount of a provisional safeguard measure shall be collected and paid in refundable form, or guaranteed by the furnishing of a bond or deposit in favor of the Customs General Directorate.
2. Any amount collected as a provisional safeguard measure shall be refunded, and any bond or deposit shall be promptly released, as soon as possible 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.
3. The Customs General Directorate shall be responsible for the assessment and collection of provisional safeguard measures.

Section II: Conclusion of Investigation Regarding Serious Injury or Threat Thereof  
and the Reasons for It

(e) the names of known producers or exporters in the country or countries of origin; and

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

2. The Government of Afghanistan shall immediately notify the Safeguards Committee if it is determined that increased imports have caused or threaten to cause serious injury to the domestic industry. Such notification shall contain pertinent information and conform to the requirements established by the Committee Board

### Section III: Definitive Safeguard Measures

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1. Immediately upon taking a decision regarding the application of a definitive safeguard measure, the Office-Board shall publish a Notice Regarding Application of a Definitive Safeguard Measure in a prominent national newspaper/news medium

2. If the decision is to apply a definitive safeguard measure, the Notice shall contain the following information:

- (i) a complete description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
- (ii) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;
- (iii) the names of all known producers of the domestic like or directly competitive products;
- (iv) the country or countries of origin of the investigated product;
- (v) the names of known producers or exporters in the country or countries of origin
- (vi) a summary of the unforeseen developments that led to the increase in imports of the investigated product, or to a change in the conditions under which such imports occur;
- (vii) 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 or a cross-reference to the Notice of Determination Regarding Serious Injury or Threat Thereof and Causation;
- (viii) the reasons for which the Office-Board has concluded that application of a definitive safeguard measure is in the public interest;
- (ix) details concerning the domestic industry's adjustment plan;
- (x) the form, level and duration of the proposed definitive safeguard measure, and an explanation thereof in light of the requirements of Article 33.2 and the domestic industry's adjustment plan;
- (xi) the proposed date of application of the definitive safeguard measure;
- (xii) if a quantitative restriction is proposed, the allocation of the quota among the supplier countries, and an explanation of the relevant information, in light of the provisions of Article 38, regarding the basis on which this allocation has been made;
- (xiii) if the proposed duration of the measure (including the period of application of

(xiviii) an identification of the developing countries exempted from the measure.

3. If the decision is not to apply a definitive safeguard measure, the Notice shall set forth the factual and legal basis for the decision.

## Notification and Consultation

### Article 35

1. Immediately upon a decision to apply a definitive safeguard measure, but before such measure takes effect, the Government of Afghanistan shall notify the Safeguards Committee with all pertinent information, including the evidence of serious injury or threat thereof caused by increased imports, the precise description of the investigated product, the form, level and duration of the proposed measure, the proposed date of application of the measure, and, if relevant, the proposed timetable for progressive liberalization. Such notification shall conform to the requirements established by the Committee.

2. Before a definitive safeguard measure is applied, the Government of Afghanistan shall provide adequate opportunity and sufficient time for consultations with those Members having a substantial interest as exporters of the investigated product, with a view to among others reviewing the information notified to the Safeguards Committee regarding the finding of serious injury or threat thereof caused by increased imports and regarding the proposed measure, exchanging views about the measure and reaching an understanding on ways to endeavor to maintain a substantially equivalent level of concessions and other obligations as set forth in paragraph 3 below.

3. In applying a definitive safeguard measure, the Government of Afghanistan shall endeavor to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Afghanistan and the exporting WTO Members which would be affected by such measures.

4. For the purposes of maintaining a substantially equivalent level of concessions and other obligations as referred to in paragraph 3 above, agreement may be reached with affected WTO Members, through the consultations referred to in paragraph 2 above, on any adequate means of trade compensation for the adverse effects of the definitive safeguard measure on the trade of those WTO Members.

5. The Government of Afghanistan shall inform the Council for Trade in Goods of the WTO immediately, through the Safeguards Committee, of the results of the consultations, including any compensation granted.

## Form and Application of a Definitive Safeguard Measure

### Article 36

1. A definitive safeguard measure may take the form of a tariff increase, tariff quota, quota or other appropriate measure.

2. Subject to the provisions of Article 37, any definitive safeguard measure shall be applied to all imports of the investigated product irrespective of source, entered on or after the date on which the measure takes effect.

3. The Customs General Directorate shall be responsible for the collection of a definitive safeguard measure in the form of a tariff increase or in the form of a quantitative restriction.

#### Non-application of a Definitive Safeguard Measure to Certain Developing Countries

##### Article 37

1. A definitive safeguard measure shall not be applied to imports of the investigated product originating in a developing country WTO Member as long as those imports account for no more than three per cent of total imports of the investigated product in Afghanistan.

2. Notwithstanding paragraph 1 above, imports from developing country WTO Members which individually account for less than three per cent of Afghanistan's imports of the investigated product collectively account for more than nine per cent of Afghanistan's imports of the investigated product, a definitive safeguard measure may nonetheless be applied to the imports from those developing country WTO Members.

3. The Government of Afghanistan shall notify the non-application of a definitive safeguard measure to imports originating in a developing country WTO Member to the Safeguards Committee, in conformity with the requirements established by the Committee.

#### Quotas as Definitive Safeguard Measures

##### Article 38

1. A definitive safeguard measure in the form of a quota on imports of the investigated product shall not reduce the quantity of those imports below the average level registered in the most recent three representative years for which statistics are available.

2. Notwithstanding paragraph 1 above, the Office Board may, upon clear justification that a different level is necessary to prevent or remedy serious injury or threat of serious injury, apply a quota which reduces the quantity of imports of the investigated product below the average level registered in the most recent three representative years for which statistics are available.

3. If more than one country exports the investigated product to Afghanistan, any quota on imports shall be allocated among supplying countries. The Government of Afghanistan shall attempt to reach agreement with the WTO Members having a substantial interest in supplying the investigated product as to the allocation of shares of the total quota amount.

4. Where the Office Board determines that the method set forth in paragraph 3 above is not reasonably practical for allocation of the quota, the Office Board shall allocate the quota among countries having a substantial interest in supplying the investigated product. The allocation shall be based upon the proportions of the investigated product supplied by such countries during the previous three years and allocating the quota among supplying countries,





A definitive safeguard measure whose period of application exceeds one year shall be progressively liberalized at regular intervals during the period of application, in accordance with the schedule published in the Notice Regarding Application of a Definitive Safeguard Measure provided for in Article 34. If the duration of the measure exceeds three years, the Office Board shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A safeguard measure which has been extended under this Law shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

#### Section IV: Review of a Definitive Safeguard Measure

##### Review

##### Article 42

1. If the duration of a definitive safeguard measure, including the period of application of any provisional measure exceeds three years, later than the mid-term of the period of application of the measure, the Office Board

2. Subject to the provisions of Article 38, a safeguard measure may be extended one time only, for a period of not more than six years.
3. The Office Board may extend a definitive safeguard measure only if it determines through the investigation referred to in paragraph 1, above, that the measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the domestic industry is adjusting.
4. 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. Such Notice shall conform *mutandis* to the requirements for the Notice Applying a Definitive Safeguard Measure, provided for in Article 34.
5. In extending a definitive safeguard measure, the Government of Afghanistan shall endeavor to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Afghanistan and the exporting WTO Members which would be affected by such measures.
6. The requirements pertaining to notifications to the Safeguards Committee and to the WTO Council for Trade in Goods set forth in Articles 17, 28, 32, 35, 37, 38, and 39 of this Law and the requirements pertaining to consultations with exporting WTO Members whose interests would be affected by the measure set forth in Articles 28, 35 and 38 of this Law, shall apply in full to any extension of a safeguard measure.

#### Reapplication of a Safeguard Measure

##### Article 44

1. No new safeguard measure shall be applied a period of at least two years to imports of a product which were earlier the subject of a definitive safeguard measure.
2. No new safeguard measure shall be applied to the imports of a product for a period equal to one-half of the duration of an earlier definitive safeguard measure on that product, if such duration was more than four years.
3. Notwithstanding the provisions of paragraphs 1 and 2 above, a safeguard measure with a duration of 180 days or less may be applied to the imports of an investigated product which was the subject of an earlier safeguard measure if:
  - (a) at least one year has elapsed since the date of imposition of the earlier safeguard measure on the imports of that product; and
  - (b) a safeguard measure has not been applied on imports of the product more than twice in the five year period immediately preceding the date on which the new safeguard measure is to take effect.

### CHAPTER VI: FINAL PROVISIONS

#### International Obligations

