



## THE SAFEGUARD MEASURES ORDINANCE, 2002



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# **THE SAFEGUARD MEASURES ORDINANCE, 2002.**

## **ORDINANCE NO. XXXI OF 2002**

### ***an Ordinance to amend the Safeguard Measures Ordinance, 2002***

WHEREAS it is expedient to give effect in Pakistan to the provisions of Article XIX of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on Safeguards to provide for the imposition of safeguard measures in accordance therewith, to provide a framework for investigation and determination of serious injury or threat of serious injury caused by products imported into Pakistan and for matters ancillary thereto or connected therewith;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action; NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance :-

### **PART I PRELIMINARY**

**1. Short title, extent and commencement.**—(1) This Ordinance may be called the Safeguard Measures Ordinance, 2002.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.**— In this Ordinance, unless there is anything repugnant in the subject or context,-

- (a) "Agreement on Safeguards" means the Agreement on Safeguards included in Annex (1A) to the Final Act of the Results of the Uruguay Round concerning the Implementation of Article XIX of the General Agreement on Tariffs and Trade, 1994;
  - (b) "Commission" means the National Tariff Commission established under the National Tariff Commission Act, 1990 (VI of 1990);
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- (c) "Committee" means the Committee on Safeguards of the WTO established pursuant, to Article 13 of the Agreement on Safeguards;
  - (d) "country" means any country or territory whether a Member or not and includes a customs union or separate customs territory;
  - (e) "developing country" means a country categorized as such by the WTO;
  - (f) "domestic industry" means the producers as a whole of products which are like or directly competitive with the investigated product, operating within Pakistan or those producers operating within Pakistan whose collective output of like or directly competitive products constitutes a major proportion of the total production of such products in Pakistan;
  - (g) "interested party" includes-
    - (i) the exporter or foreign producer of an investigated product.
    - (ii) the importer of an investigated product;
    - (iii) trade or business associations a majority of the members of which are producers, exporters or importers of an investigated product;
    - (iv) the producer of a domestic like or directly competitive product in Pakistan;
    - (v) trade or business associations a majority of the members of which produce a domestic like or directly competitive product in Pakistan; and
    - (vi) such other person or group of persons as the Commission may from time to time notify in the official Gazette;
  - (h) "investigated product" means an imported product subject to an investigation, as described in the public notice of initiation of an investigation referred to in clause (b) of sub-section (1) of section 10:
  - (i) "investigation" means an investigation conducted under this Ordinance.
  - (j) "like product" means a product which is alike in all respects to investigated product or, in the absence of such a product, another product
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which, although not alike in all respects, has characteristic closelyresembling those of the investigated product;

- (k) "Member" means a country which is a member of the WTO;
- (l) "participating-interested patties" means those interested parties that have indicated their interest in participating in an investigation, to the Commission under section 11;
- (m) "prescribed" means prescribed by rules made under this Ordinance;
- (n) "public notice" means a notice published in the official Gazette;
- (o) "quota" means import quotas including tariff rate quotas;
- (p) serious injury" means a significant overall impairment in the position of a domestic industry caused by increased imports, absolute or relative to domestic production, of an investigated product;
- (q) hreat of serious injury" means serious injury that is clearly imminent; and
- (r) "WTO" means the World Trade Organisation established pursuant to the Marrakesh Agreement concluded in Marrakesh, Morocco, on the 15th April, 1994.

## **PART II**

### **SAFEGUARD MEASURES**

**3. Application of safeguard measures.** The Federal Government may, by notification in the official Gazette, apply a safeguard measure on an investigated product imported into Pakistan if, it has been determined by the Commission pursuant to an investigation conducted by it in accordance with the provisions of this Ordinance that as a result of unforeseen developments and of the effect of WTO obligations assumed by Pakistan, the investigated product is being imported in such increased quantities absolute or relative to domestic production, and under such conditions as to cause serious injury or threat of serious injury to domestic industry producing like or directly competitive products.

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### **PART III**

## **SERIOUS INJURY OR THREAT OF SERIOUS INJURY AND CAUSATION**

**4. Serious injury.** A determination of serious injury or threat of serious injury shall be based upon an evaluation, by the Commission, of all relevant factors of an objective and quantifiable nature having a bearing on the situation of domestic industry including, but not limited to, the following, namely:-

- (i) The rate and amount of an increase in imports of an investigated product, in absolute terms and relative to domestic production of like or directly competitive products;
- (ii) the share of domestic market taken by increased imports of an investigated product;
- (iii) the impact of increased imports of an investigated product on domestic industry, as evidenced by relevant indicators including, but not limited to, production, productivity, capacity utilisation, sales, market share, profits and losses, and employment; and
- (iv) factors other than increased imports of an investigated product which at the same time are causing serious injury or threat of serious injury.

**5. Threat of serious injury.**— (1) In determining threat of serious injury, the Commission shall, in addition to the factors specified in section 4, evaluate the following, namely:-

- (i) The actual and potential export capacity of the country of production or origin of an investigated product;
- (ii) any build-up of inventories of an investigated product in Pakistan and in the country of exportation;
- (iii) the probability that imports of an investigated product shall enter domestic market in increasing quantities; and
- (iv) any other factors deemed relevant by the Commission.

**6. Factors other than increased imports.** When serious injury or threat of serious injury is being caused by factors other than increased imports of an investigated product, such injury shall not be attributed to the increased imports.

### **PART IV**

## **INVESTIGATION**

**7. Initiation of investigation.**—(1) An investigation to determine serious injury or threat of serious injury may be initiated by the Commission-

- (a) upon receipt by the Commission of a written application for initiation of an investigation by or on behalf of domestic industry; or
- (b) suo moto by the Commission where it is satisfied that there is sufficient evidence to justify the initiation of an investigation.

(2) The application referred to in clause (a) of sub-section (1) shall-

- (i) be submitted to the Commission in such manner, number and form and with such fee as may be prescribed; and
- (ii) include such information as may be prescribed.

**8. Withdrawal of application before initiation.** An application received by the Commission pursuant to clause (a) of sub-section (1) of section 7 may be withdrawn prior to initiation of an investigation by the Commission in which case it shall be considered not to have been made:

Provided that upon such withdrawal of an application and fee paid along with the application pursuant to clause (i) of sub-section (2) of section 7 shall stand, forfeited in favour of the Commission.

**9. Initiation of investigation.**-(1) The Commission shall examine the accuracy and adequacy of the evidence given in an application received pursuant to clause (a) of sub-section (1) of section 7 in order to determine whether it is compliant with the requirements of sub-section (2) of section 7 and, if so, whether there is sufficient evidence to justify initiation of an investigation.

(2) An application received by the Commission pursuant to clause (a) of subsection (1) of section 7 shall be rejected if the Commission is satisfied that there is not sufficient evidence of serious injury or threat of serious injury to justify initiation of an investigation.

(3) The Commission may seek additional information from an applicant submitting an application pursuant to clause (a) of sub-section (1) of section 7, before deciding whether to initiate an investigation and such information shall be provided by the applicant to the Commission within such time and in such manner as the Commission may direct.

(4) When the Commission is satisfied that there is sufficient evidence of serious injury or threat of serious injury to justify the initiation of an investigation, it shall initiate an investigation.

(5) Where the Commission does not consider it appropriate to initiate investigation, it shall notify its decision by a public, notice of non-initiation of an investigation and such notice shall contain such information as may be prescribed:

Provided that the Commission may, if it deems fit, only publish a summary of the public notice of non-initiation of an investigation in the official Gazette provided that a full text of such notice is promptly placed in the public file to be maintained by it pursuant to section 15.

(6) The Commission shall decide whether or not to initiate an investigation within such time period as may be prescribed :

Provided that different time periods may be prescribed for this purpose depending on the complexity of the issues involved.

**10. Notice of initiation of investigation.**—(1) Where the Commission has decided to initiate an investigation it shall-

- (a) immediately notify the Federal Government of its decision and the Federal Government shall immediately notify the Committee of such decision in accordance with any requirements established by a Committee therefor; and
- (b) notify its decision by means of a public notice of initiation of an investigation.

(2) The public notice of initiation of an investigation referred to in clause (b) of sub-section (1) shall be in such form and contain such information as may be prescribed and the initiation of an investigation shall be effective .on the date on which such notice is published in the official Gazette:

Provided that the Commission may, if it deems fit, only publish a summary of the public notice of initiation of an investigation referred to in clause (b) of subsection (1) in the official Gazette provided that a full text of such notice is promptly placed in the public file to be maintained by it pursuant to section 15.

(3) The Commission shall promptly provide a copy of the full text of public notice of initiation of an investigation referred to in clause (b) of sub-section (1) the Federal Government.

**11. Participation of interested parties.**—(1) Any interested party desiring to participate in an investigation shall have a period of fifteen days from the date of initiation of the investigation to indicate to the Commission, in writing, of interest in participating in the investigation:

Provided that the Commission may, at its discretion, allow any interests party to indicate its interest in participating in an investigation after the expiry of the fifteen day time period, upon good cause shown.

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(2) Subject to the requirement to protect confidential information pursuant to section 14 and upon payment to the Commission of the prescribed fee, the Commission shall, after initiation of an investigation, provide any interested-party on application the full text of the application received by the Commission pursuant to clause (a) of sub-section (1) of section 7.

**12. Schedule for investigation.**—(1) The Commission shall complete investigation within four months from the date of its initiation:

Provided that the Commission may extend such four months period where it deems it necessary for a further period not exceeding two months.

(2) Where the application of a provisional measure is to be considered by the Commission, it shall reach its provisional determination no later than forty-five days, from the date of initiation of an investigation:

Provided that the Commission may extend such forty-five days period, where it deems it necessary, for a further period not exceeding fifteen days.

**13. Conduct of investigation.**—(1) The Commission may seek from an applicant submitting an application pursuant to clause (a) of sub-section (1) of section 7 or any or all of the participating interested parties, customs agents, inspection companies, forwarders, or any other enterprise or entity of the public or private sector, such data or information as it considers relevant or necessary for performance of its functions under this Ordinance and such data or information shall be provided to the Commission within such time period and in such manner as the Commission may direct.

(2) The Commission may conduct on-the-spot investigations to verify or obtain further details concerning the information provided:

Provided that where such investigations are conducted, the Commission shall prepare a report describing the findings of the verification and, subject to the requirement to protect confidential information pursuant to section 14, a copy of such report shall be promptly placed in the public file to be maintained by it pursuant to section 15.

**14. Confidentiality.**—(1) Subject to sub-section (2), the Commission shall, during and after an investigation, keep confidential any information submitted to it and such information shall not be disclosed without specific permission of the party submitting it.

(2) Information which is-

(a) by nature confidential, because its disclosure shall be of significant competitive advantage to a competitor, or because its

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disclosure would have a significantly adverse effect upon a person supplying the information, or upon a person from whom the information was acquired

- (b) determined by the Commission to be of a confidential nature for any other reason; or
- (c) provided on a confidential basis by parties to an investigation, shall, upon good cause shown, be treated as confidential by the Commission.

(3) The following types of information shall be deemed to be by nature confidential, unless the Commission determines that disclosure in a particular case would neither be of significant competitive advantage to a competitor nor have a significantly adverse effect upon a person supplying the information or upon a person from whom such information was acquired, namely:-

- (a) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;
- (b) information concerning the financial condition of a company which is not publicly available; and
- (c) information concerning costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit, loss or expenditure related to manufacture and sale of a product.

(4) Any party seeking any information to be kept confidential shall request for the same at the time the information is submitted, along with the reasons warranting confidentiality. The Commission shall consider such requests expeditiously and inform the party submitting the information if it determines that the request for keeping the information confidential is not warranted.

(5) Any party submitting any information with the request to keep it confidential shall furnish non-confidential summary of all such information. Such summary may take the form of ranges or indexation of figures provided in the confidential version or marked deletions in text or in such other form as the Commission may require:

Provided that such non-confidential summary shall permit a reasonable understanding of the substance of the information submitted in confidence:

Provided further that any deletion in text shall, unless otherwise allowed by the Commission, only relate to names of the buyer or supplier.

(6) In exceptional circumstances, any party submitting confidential information may indicate that much information is not susceptible of summary, in which case a statement of the reasons why summarisation is not possible shall be provided. If the Commission concludes that the non-confidential summary provided fails to satisfy the requirements of sub-section (5), it may determine, that the request for keeping the information confidential is not warranted.

(7) If the Commission finds that a request for keeping the information confidential is not warranted, and if the supplier of such information is unwilling to make the information public or to authorise the disclosure in generalised or summary form, the Commission shall disregard such information and return the same to the party submitting it.

(8) Notwithstanding anything contained in this Ordinance or in any other law for the time being in force, any confidential information received or obtained, directly or indirectly, by the Commission pursuant to or in connection with an investigation shall not be subject to disclosure by the Commission to any Ministry, Division, department, agency or instrumentality of the Federal Government or a Provincial Government without the prior permission of the party submitting such confidential Information,

**15. Information to participating interested parties.**-(1) The Commission shall establish and maintain a public file relating to each investigation or review pursuant to this Ordinance and such file shall contain such information as may be prescribed,

(2) The public file to be maintained under sub-section (1) shall be available to any participating interested party for examination and, upon payment of the prescribed fee to the Commission for copying, at the offices of the Commission during such time as the Commission may notify, throughout the course of an investigation or review under this Ordinance.

**16. Written arguments and hearings.**-(1) During an investigation any participating interested party may submit written arguments to the Commission in such form and manner and within such time period as may be prescribed

(2) During an investigation the Commission may hold a hearing at which participating interested parties may present information and arguments orally, in accordance with such provisions as may be prescribed; Provided that such information and arguments shall be only taken into consideration by the Commission if the same are confirmed in writing to the Commission.

**17. Reliance on information available.** If, at any time during an investigation, any interested party-

- (a) refuses access to, or otherwise does not provide, necessary information within the period of time as may be prescribed; or
- (b) otherwise significantly impedes the investigation, the Commission may make determinations under this Ordinance on the basis of the available information.

## **PART V**

### **APPLICATION OF PROVISIONAL SAFEGUARD DUTY**

**18. Application of provisional safeguard duty.**-(1) Subject to the provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, impose a provisional safeguard duty on an investigated product where the commission determines that-

- (a) there are critical circumstances such that delay in taking action would cause damage which would be difficult to repair; and
- (b) there is clear evidence of serious injury or threat of serious injury.

(2) A provisional safeguard duty shall-

- (a) take the form of duty on an investigated product not exceeding the amount which the Commission considers adequate to prevent the occurrence of or facilitate recovery from serious injury or threat of serious injury, as recommended by the Commission pursuant to clause (a) of sub-section (3) of section 19;
- (b) be imposed in addition to any other duties levied on an investigated product under any other law for the time being in force; and
- (c) be collected in the same manner as customs-duty under the Customs Act, 1969 (IV of 1969).

(3) A provisional safeguard duty shall be applied for a period not exceeding two hundred days and may be suspended before its date of expiration if so determined by the Federal Government.

**19. Report of provisional determination.**—(1) Immediately upon reaching a determination of the factors set forth in clauses (a) and (b) of sub-section (1) of section 18, the Commission shall prepare a report of provisional determination containing a detailed analysis of the information obtained in an investigation and setting forth the Commission's findings and reasoned conclusions on the existence of the factors set forth in clauses (a) and (b) of section 17.

(2) The Commission shall submit the report of provisional determination referred to in sub-section (1) to the Federal Government for its consideration.

(3) Where the Commission has reached an affirmative determination of the existence of the factors set forth in clauses (a) and (b) of sub-section (1) of section 18, the report of provisional determination referred to in sub-section (1) shall also include the Commission's recommendation regarding-

- (a) the amount of provisional safeguard duty the Commission considers adequate to prevent occurrence of or facilitate recovery from serious injury or threat of serious injury ; and
- (b) subject to the provisions of section 17, the duration of levy of the provisional safeguard duty.

**20. Notice of non-application of provisional safeguard duty.**—(1) Where the Commission reaches a negative determination of the existence of the factors set forth in clauses (a) and (b) of sub-section (1) of section 18, it shall notify its decision by means of a public notice of non-application of provisional safeguard duty and such notice shall contain such information as may be prescribed;

Provided that the Commission may, if it deems fit, only publish a summary of the public notice of non-application of a provisional safeguard measure in the official Gazette provided that a full text of such notice is promptly placed in the public file to be maintained pursuant to section 15.

(2) The Commission shall promptly provide a copy of the full text of the notice of non-application of provisional safeguard duty referred to in sub-section (1) to the Federal Government.

**21. Decision to apply provisional safeguard duty by the Federal Government.**— (1) Where the report of provisional determination received by the Federal Government pursuant to section 19 contains an affirmative determination of the existence of the factors set forth in clauses (a) and (b) of sub-section (1) of section 18, the Federal Government shall, no later than fifteen days after the receipt of such report from the Commission, take a decision, affirmative or negative, regarding the imposition of provisional safeguard duty on an investigated product, taking into account the recommendations of the Commission set forth in the report of provisional determination.

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(2) Immediately upon taking an affirmative decision regarding imposition of a provisional safeguard duty, the Federal Government shall notify its decision by means of a public notice of application of a provisional safeguard duty:

Provided that the Federal Government may, if it deems fit, only publish a summary of the public notice of application of a provisional safeguard measure in official Gazette provided that a full text of such notice shall be promptly placed the public file to be maintained pursuant to section 15.

(3) The public notice of application of a provisional safeguard measure referred to in sub-section (1) shall contain such information as may be prescribed and a copy of the full text thereof shall be provided by the Federal Government to the Commission.

**22. Notification and consultations.**-(1) Immediately upon receipt of the Commission's report pursuant to section 19, the Federal Government shall notify the Committee of the recommendation in conformity with any requirements established by the Committee therefore.

(2) The Federal Government shall immediately engage in consultations, upon a request from any Member having a substantial interest as an exporter of an investigated product subject to the provisional safeguard duty, in accordance with the requirements of the Agreement on Safeguards.

## **PART VI**

### **APPLICATION OF DEFINITIVE SAFEGUARD MEASURES AND DETERMINATION REGARDING SERIOUS INJURY OR THREAT THEREOF**

**23. General principles governing application of definitive safeguard measure.**-(1) Subject to the provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, impose a definitive safeguard measure where the Commission makes a final affirmative determination of the existence of serious injury or threat of serious injury.

(2) The duration and level of any such measure shall be no more than is necessary to prevent or remedy serious injury and to facilitate adjustment.

**24. Determination of serious injury or threat thereof.**-(1) The Commission shall determine the existence of serious injury or threat of serious injury, in conformity with the provisions of sections 4 and 5 and on the basis of objective evidence obtained in an investigation.

(2) Immediately upon reaching its determination, whether affirmative or negative, as to the existence of serious injury or threat of serious injury pursuant to sub-

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section (1), the Commission shall prepare a report of its final determination containing a detailed analysis of the information obtained in an investigation and setting forth the Commission's findings and reasoned conclusions on all pertinent issues of fact and law including a demonstration of the relevance of the factor examined by the Commission.

(3) The Commission shall submit the report of its final determination referred to in sub-section (2) to the Federal Government for its consideration.

(4) Where the Commission has reached an affirmative final determination of serious injury or threat of serious injury pursuant to sub-section (1), the Federal Government shall, immediately upon receipt of the report of final determination from the Commission, notify the Committee of such affirmative final determination in conformity with any requirements established by the Committee therefore.

(5) Where the Commission has reached an affirmative final determination of serious injury or threat of serious injury, its report of final determination referred to in sub-section (2) shall also include the Commission's recommendation regarding the form, level and duration of a definitive safeguard measure:

Provided that where the Commission recommends that a definitive safeguard measure take the form of a quota on import of an investigated product, such recommendation shall be consistent with the provisions of section 30.

(6) Where the Commission has reached a negative final determination of serious injury or threat of serious injury pursuant to sub-section (1), it shall notify its decision by means of a public notice of negative final determination and such notice shall include such information as may be prescribed:

Provided that the Commission may, if it deems fit, only publish a summary of the public notice of negative final determination in the official Gazette provided that a full text of such notice shall be promptly placed in the public file to be maintained pursuant to section 15.

(7) The Commission shall promptly provide a copy of the full text of the public notice of negative final determination referred to in sub-section (6) to the Federal Government.

(8) Where the Commission has reached a negative final determination, the Federal Government shall, by notification in the official Gazette, within fifteen days of receipt of the public notice of negative final determination referred to in subsection (5), withdraw the provisional safeguard duty, if any, imposed on an investigated product.

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(9) Where the Federal Government has withdrawn a provisional safeguard duty imposed on an investigated product pursuant to sub-section (8), the Commission shall promptly refund the actual amount collected as provisional safeguard duty on the investigated product, upon receipt of a written application from the importer in question.

(10) Where the Commission recommends that a definitive safeguard measure take the form of a definitive safeguard duty, it shall-

- (a) specify the rate of definitive safeguard duty the Commission considers adequate to prevent the occurrence of or facilitate recovery from serious injury or threat of serious Injury; and
- (b) subject to the provisions of section 32, the duration of levy of a definitive safeguard duty and where the period to recommended is more than one year, recommend a timetable for progressive liberalisation adequate to facilitate positive adjustment of domestic Industry.

**25. Decision by the Federal Government to apply definitive safeguard measure.** Where the report of final determination received by the Federal Government pursuant to section 24, contains in affirmative determination of serious Injury or thereat of serious Injury, the Federal Government shall, no later than thirty days after the receipt of such report from the Commission, stake a decision, affirmative or negative, regarding the Imposition of a definitive safeguard measure on an Investigated product, taking into account the re-commendations of the Commission set forth in the report of final determination.

**26. Public notice of application of definitive safeguard measure.**-(1) Immediately upon taking a decision regarding the imposition of a definitive safeguard measure, whether affirmative or negative, the Federal Government shall notify its decision by means of a public notice of application of a definitive safeguard measure.

(2) The public notice of application of a definitive safeguard measure referred to in sub-section (1) shall contain such information as may be prescribed and a copy thereof shall be provided by the Federal Government to the Commission:

Provided that where Federal Government has taken a decision not to impose a definitive safeguard measure, the public notice of final determination referred to in sub-section (1) shall only set forth the factual and legal basis for the decision:

Provided further that the Federal Government may, if it deems fit, only publish a summary of the public notice of final determination referred to in subsection (1) in the official Gazette provided that a full text of such notice shall be promptly placed in the public file to be maintained pursuant to section 15.



**27. Notification and consultation.**—(1) Immediately upon taking a decision to apply a definitive safeguard measure but before such measure comes into force, the Federal Government shall notify the Committee regarding the evidence of serious injury or threat of serious injury, the precise description of an investigated product, the form, level and duration of the proposed measure, the proposed date of application of the measure, and, where applicable, the proposed timetable for its progressive liberalisation. Such notification shall conform to any requirements established by the Committee therefore.

(2) Where the Federal Government proposes to apply a definitive safeguard measure it shall provide adequate opportunity for prior consultations with those Members requesting consultations and having a substantial interest as exporters of an investigated product subject to the definitive safeguard measure, with a view to, inter alia, reviewing the information notified to the Committee regarding the finding of serious injury or threat of serious injury and regarding the proposed measure, exchanging views about the measure, and reaching an understanding on ways to achieve the objective set forth in sub-section (3).

(3) In applying a definitive safeguard measure, the Federal Government shall endeavour to maintain a substantially equivalent level of concessions and other obligations to those existing under the General Agreement on Tariffs and Trade, 1994, between Pakistan and the exporting 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 sub-section (3), agreement may be reached with affected Members, through the consultations referred to in subsection (2), on any adequate means of trade compensation for the adverse effects of a definitive safeguard measure on the trade of those Members.

(5) The Federal Government shall notify the Council for Trade in Goods of the WTO immediately, through the Committee, of the results of any consultations undertaken pursuant to this section, including, where applicable, any compensation granted.

**28. Form and application of definitive safeguard measure.**—(1) A definitive safeguard measure may take the form of either a definitive safeguard duty on an investigated product or a quota on imports of the investigation product, as may be recommended by the Commission in its report of final determination referred to in sub-section (5) of section 24.

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(2) Subject to the provisions of section 29, a definitive safeguard measure shall be applied to all imports of an investigated product, irrespective of source, imported into Pakistan on or after the date on which the measure comes into force.

(3) Where a definitive safeguard measure takes the form of a definitive safeguard duty, such duty shall be-

- (a) in the form of duty on an investigated product not exceeding the amount which the Commission considers adequate to prevent the occurrence of or facilitate recovery from serious injury or threat of serious injury, as recommended by the Commission pursuant to clause (a) of subsection (10) of section 24;
- (b) imposed in addition to any other duties imposed on an investigated product under any law for the time being in force; and
- (c) collected in the same manner as customs-duty under the Customs Act, 1969 (IV of 1969).

(4) Where a definitive safeguard measure is in the form of a quota on imports of an investigated product such measure shall be imposed and administered by the Federal Government in conformity with the provisions of section 30 and taking into account the recommendations of the Commission set forth in the report of final determination.

(5) Where a definitive safeguard duty imposed by the Federal Government is lower than the amount collected as a provisional safeguard duty, the Commission shall upon receipt of a written application from the importer in question refund the differential.

**29. Non-application of definitive safeguard measure to certain developing countries.** Notwithstanding anything contained in this Ordinance a definitive safeguard measure shall not be applied to imports of an investigated product originating from a developing country Member as long as such imports account for no more than three per cent of the total imports of the investigated product into Pakistan:

Provided that if imports from developing country Members which individually account for less than three per cent of imports of an investigated product into Pakistan, collectively account for more than nine per cent of imports of the investigated product into Pakistan, a definitive safeguard measure may be applied to such imports from those developing country Members.

**30. Quota as definitive safeguard measure.**-(1) A definitive safeguard measure in the form of a quota on imports of an 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 with the Commission.

(2) Notwithstanding the provisions of sub-section (1), the Federal Government 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 an 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 an investigated product to Pakistan, any quota on imports shall be allocated among supplying countries. The Federal Government shall attempt to reach agreement with those Members having a substantial interest in supplying the investigated product as to the allocation of shares of the total quota amount.

(4) Where the Federal Government determines that the method set forth in subsection (3) is not reasonably practical for allocation of the quota, the Federal Government shall allocate the quota among countries having a substantial interest in supplying an investigated product:

Provided that such allocation by the Federal Government shall be based upon the proportions, supplied by such countries during a previous three years representative period, of the total quantity or value of the investigated product:

Provided farther that in allocating the quota among supplying countries, the Federal Government shall take due account of any special factors which may have affected or may be affecting trade in the investigated product.

(5) Notwithstanding the provisions of sub-sections (3) and (4), in a case in which serious injury has been found, the Federal Government may allocate the quota among supplying countries on a different basis, provided that consultations have been held with supplying Members under the auspices of the Committee, and a clear demonstration is provided to the Committee that-

- (a) imports from certain countries have increased in disproportionate percentage in relation to the total increase in imports of an investigated product during the representative period;
  - (b) the reasons for the departure from the methodology for quota allocation envisaged under sub-sections (3) and (4) are justified; and
  - (c) the conditions of such departure are equitable to all suppliers of an investigated product concerned.
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(6) Notwithstanding the provisions of section 34, a definitive safeguard measure in the form of a quota allocated on the alternative basis provided for in subsection (5) shall not be extended beyond the initial period of its application.

**31. Termination without application of safeguard measure.** If at any point an investigation is terminated without the application of a definitive safeguard measure, the Federal Government shall immediately notify the Committee, in conformity with any requirements established by the Committee therefore.

**32. Duration of definitive safeguard measure.** A definitive safeguard measure shall be applied for a period of no more than four years, including the period of application of any provisional measure, unless it is extended as provided for in section 35:

Provided that the total duration of a definitive safeguard measure, including the period of application of any provisional measure, the period of initial application, and any extension thereof pursuant to section 36, shall not exceed ten years.

**33. Progressive liberalisation.** A definitive safeguard measure whose period of application exceeds one year shall be progressively liberalised at regular intervals during the period of application, in accordance with the schedule published in the public notice of application of a definitive safeguard measure referred to in section 26.

## **PART VII REVIEW OF DEFINITIVE SAFEGUARD MEASURES**

**34. Review.**-(1) If the duration of a definitive safeguard measure, including the period of application of any provisional safeguard duty, exceeds three years, not later than the mid-term of the period of application of such measure, the Commission shall examine the situation, through a review conducted in accordance with the procedures set forth in sections 10, 11, 12, 13, 14, 15, 16 and 17, mutatis mutandis, including a review of the effects of the definitive safeguard measure on the domestic industry concerned and of the domestic industry's progress in implementing its adjustment plan.

(2) The results of review shall be set out by the Commission in a report in which it shall also recommend whether to maintain or withdraw a definitive safeguard measure under review or to increase the pace of its liberalisation.

(3) The report referred to in sub-section (2) shall be promptly provided by the Commission to the Federal Government for its consideration.

(4) The Federal Government shall, no later than thirty days of the receipt of a report under sub-section (3), notify its decision whether to maintain or withdraw a definitive safeguard measure under review or to increase the pace of its liberalisation, by means of a public notice and the contents of such notice shall inform, mutatis mutandis, to the requirements for the public notice of application of a definitive safeguard measure referred to in section 26.

(5) The Federal Government shall notify the results of review, including the withdrawal of any modification of a definitive safeguard measure, to the WTO Council for Trade in Goods, through the Committee, in conformity with any requirements established by the Committee therefor.

(6) Any review initiated pursuant to sub-section (1) shall be concluded by the Commission within a period not exceeding four months from the date of initiation, of such review:

Provided that the Commission may where it deems necessary extend four months period by a further period not exceeding two months.

## **PART VIII**

### **EXTENSION AND REAPPLICATION OF DEFINITIVE SAFEGUARD MEASURES**

**35. Extension of definitive safeguard measure.**-(1) If domestic industry considers that there is a continuing need to apply a definitive safeguard measure beyond its initial period of application, it may, submit a written application to the Commission requesting extension of the measure, not later than four months before the end of the initial period of application of such measure.

(2) An application under sub-section (1) to the Commission shall include evidence that domestic industry is carrying out its adjustment plan.

(3) Upon receipt of an application under sub-section (1), the Commission shall conduct an investigation to determine whether an extension is warranted.

(4) For the purpose of an investigation and determination pursuant to subsection (3), the procedures set forth in this Ordinance for applying an original definitive safeguard measure shall be followed mutatis mutandis.

(5) For the purpose of extension of a definitive safeguard measure, the procedures set for thin sections 25, 26, 27 and 28 shall be followed mutatis mutandis.

(6) Notwithstanding anything contained in this Ordinance, the Federal Government may, by notification in the official Gazette, extend a definitive safeguard measure only if the Commission determines through an investigation pursuant to sub-section (3) that the measure continues to be necessary to offset the effects of serious injury or a threat of serious injury and that there is evidence that the domestic industry is adjusting.

(7) The Federal Government shall notify its decision, whether affirmative or negative, regarding the extension of a definitive safeguard measure by means of a public notice of extension of a definitive safeguard measure or a public notice of non-extension of a definitive safeguard measure, as the case may be, and the provisions of section 26 or sub-section (6) of section 23 respectively shall, mutatis mutandis, apply to such notices.

(8) Subject to the provisions of sub-section (6) of section 30, a definitive safeguard measure may be extended for a period of not more than six years.

(9) A definitive safeguard measure extended pursuant to this section shall not be more restrictive than at the end of the initial period of its application and during the extension period such measure shall continue to be progressively liberalised in accordance with the schedule published in a notice of extension of a definitive safeguard measure referred to in sub-section (7).

(10) In extending a definitive safeguard measure, the Federal Government shall endeavour to maintain a substantially equivalent level of concessions and other obligations to those existing under the General Agreement on Tariffs and Trade, 1994, between Pakistan and the exporting Members which would be affected by such measure.

(11) The requirements pertaining to notifications to the Committee and the Council for Trade in Goods of the WTO set forth in sections 10, 21, 24, 27, 29, 30, and 31, and the requirements pertaining to consultations with the exporting Members whose interests would be affected by the measure set forth in sections 22, 27 and 30 shall apply in full to any extension of a safeguard measure by the Commission under this section.

**36. Reapplication of a safeguard measure.**-(1) No new safeguard measure shall be applied for a period of at least two years to imports of a product which was the subject of a definitive safeguard measure first applied after the 1st day of January, 1995.

(2) No safeguard' measure shall be applied again to the imports of a product which has been subject to such a measure, taken after the 1st day of January, 1995 unless a period equal to one-half of the duration of the earlier definitive safeguard measure on that product has elapsed and the period of non-application of a safeguard measure on such product is at least two years.

(3) Notwithstanding the provisions or sub-sections (1) and (2), a safeguard measure with a duration of one hundred and eighty days or less may be applied to the imports of a product which was the subject of an earlier safeguard measure if-

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- (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 years period immediately preceding the date on which the new safeguard measure is to take effect.

## **PART IX MISCELLANEOUS**

**37. Duties and fees to be held in non-lapseable personal ledger account.**-(1) The Commission shall establish and maintain a non-lapseable personal ledger account in its name for the purposes of this Ordinance and all duties and fees collected pursuant to this Ordinance shall be held in such account

(2) The account to be established under sub-section (1) shall lie maintained and operated in such manner as may be prescribed.

**38. Power to make rules.** The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

**39. Public servants.**- The employees and other persons authorized to perform or exercise any function or power under this Ordinance or rendering services to the Commission as consultant or adviser shall be deemed to be public servants within the meaning of section 22 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

**40. Failure to disclose correct information.** Any person who knowingly and willfully provides false, misleading or incorrect information to the Commission whether in an application received under this Ordinance or, otherwise in connection with an investigation under this Ordinance, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term which may extend to three years, or a fine not exceeding five million rupees, or both.

**41. Cognizance of offences.**-(1) Notwithstanding anything contained in the Code of Criminal procedure, 1898 (Act V of 1898), no court other than the court of sessions shall have jurisdiction to try any person charged with an offence under section 40.

(2) No court of sessions shall take cognizance of an offence under subsection (1) except on a complaint in writing made by the order of, or authority from the Commission signed by any two members of the Commission.

**42. Protection to persons prejudiced in employment because of assisting the Commission.**-(1) An employer shall not -



- (a) gives information, whether orally or in writing, or gives documents, to the Commission in connection with an inquiry or investigation under this Ordinance;
- (b) gives evidence or produces documents, at an inquiry, investigation or hearing held under this Ordinance.

**43. Appointment of advisers and consultants.**-(1) Subject to subsection (2), the Commission may, employ and pay consultants and agents, and technical, professional and other advisers, including bankers, economists, actuaries, accountants, lawyers and other persons to do any act required to be done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes of this Ordinance.

(2) The decision to employ and the terms and conditions of employment of external advisers and consultants pursuant to sub-section (1) shall be made by the Commission in accordance with such policy guidelines as may be established by the Federal Government, in consultation with the Commission, from time to time.

**44. Indemnity.** No suit, prosecution or other legal proceedings shall lie against the Commission, the Chairman or any member of the Commission or any employee, consultant, agent or adviser of the Commission for anything which is done in good faith or intended to be done under this Ordinance or rules made there under.

**45. Removal of difficulties.** If any difficulties arise in giving effect to any of the provisions of this Ordinance, the Federal Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of two years from the commencement of this Ordinance.

**46. Ordinance to override other laws.** The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including, without limitation, the National Tariff Commission Act, 1990 (VI of 1990), and the Customs Act, 1969 (IV of 1969).



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