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ISLAMIC REPUBLIC OF AFGHANISTAN

| MINISTRY OF COMMERCE AND INDUSTRYYES

|

(DRAFT) LAW ON SAFEGUARD MEASURES FOR DOMESTIC
PRODUCTION

| **201~~32~~ (139~~21~~)**

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER I: GENERAL PROVISIONS.....	5
Article 1 – Legal Basis.....	5
Article 2 – Objectives.....	5
Article 3 – Scope.....	5
Article 4 – Conditions for Safeguard Measures.....	5
Article 5 – Definitions.....	5
CHAPTER II: COMPETENT AUTHORITY.....	7
Article 6 – National <u>Office Board</u> on International Trade and Safeguard Measures	7
Article 7 – <u>Office Board</u> Composition and Management.....	8
Article 8 – Qualifications and Conditions for <u>Office Board</u> Officials.....	8
Article 9 – Quorum and Appeal of <u>Office Board</u> Decisions.....	8
Article 10 – Confidentiality.....	9
CHAPTER III: SERIOUS INJURY OR THREAT OF SERIOUS INJURY AND CAUSAL LINK.....	9
Article 11 – Serious Injury and Causation.....	9
Article 12 – Threat of Serious Injury and Causation.....	9
CHAPTER IV: INVESTIGATION.....	10
Section I: Procedures.....	10
Article 13 – Initiation of an Investigation.....	10
Article 14 – Requirements for a Written Request.....	10
Article 15 – Withdrawal of the Request before Initiation.....	12
Article 16 – Initiation Decision.....	12
Article 17 – Public Notice and Notification Regarding Initiation.....	13
Article 18 – Contents of the Notice Regarding Initiation of a Safeguard Investigation.....	13
Article 19 – Timetable for the Investigation.....	14

	Section II: Conduct of the Investigation.....	15
	Article 20 – Investigative Powers.....	15
	Article 21 – Treatment of Confidential Information.....	15
	Article 22 – Written Arguments.....	15
	Article 23 – Hearings.....	16
	Article 24 – Public File and Access thereto.....	16
	Article 25 – Reliance on Best Information Available.....	17
	CHAPTER V: APPLICATION OF SAFEGUARD MEASURES.....	17
	Section I: Provisional Safeguard Measures.....	17
	Article 26 – Application of a Provisional Safeguard Measure.....	17
	Article 27 – Notice Regarding the Application of a Provisional Safeguard Measure.....	18
	Article 28 – Notification and Consultations.....	19
	Article 29 – Duration of a Provisional Safeguard Measure.....	19
	Article 30 – Payment and Refund of Provisional Safeguard Measure.....	19
	Section II: Conclusion of Investigation Regarding Serious Injury or Threat Thereof and the Reasons for it.....	19
	Article 31 – Determination Regarding Serious Injury or Threat Thereof and Causation.....	20
	Article 32 – Public Notice and Notification of Determination Regarding Serious Injury or Threat Thereof and Causation.....	20
	Section III: Definitive Safeguard Measures	20
20	Article 33 – General Principle.....	
	Article 34 – Notice Regarding Application of a Definitive Safeguard Measure.....	21
	Article 35 – Notification and Consultation.....	22
	Article 36 – Form and Application of a Definitive Safeguard Measure.....	23
	Article 37 – Non-application of a Definitive Safeguard Measure to Certain Developing Countries.....	23
	Article 38 – Quotas as Definitive Safeguard Measures.....	23
	Article 39 – Notification in the Event of Termination of an Investigation with no Safeguard Measure Applied.....	24
	Article 40 – Duration of a Definitive Safeguard Measure.....	25
25	Article 41 – Progressive Liberalization.....	
	Section IV: Review of Safeguard Measures.....	25
	Article 42 – Review.....	25

Section V: Extension and Reapplication of a Definitive Safeguard Measure.....	27
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Article 43 – Extension of a Definitive Safeguard Measure.....	26
Article 44 – Reapplication of a Safeguard Measure.....	26

CHAPTER VI: FINAL PROVISIONS..... 27

Article 45 – International Obligations.....	27
Article 46 – Entry into Force and Applicability.....	27

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

1. The provisions of this Law establish rules for the application of safeguard measures, which shall be understood to mean those measures provided for in the Agreement on Safeguards of the World Trade Organization and Article XIX of the General Agreement on Tariffs and Trade of 1994.

2. For the purposes of implementing paragraph (1) of this Article, a National Office Board on International Trade and Safeguard Measures, covered by Chapter II of this Law and hereinafter referred to as "the Office Board," shall be established. The Office Board shall be the competent national authority responsible for investigations required under this Law and its regulations and for determining the application of safeguard measures.

Scope

Article 3

1. The provisions of this law shall apply to all safeguard proceedings concerning imports from WTO Members. In such cases, this law shall be interpreted in conformity with WTO Law, in particular the provisions of the WTO Agreement on Safeguards and Article XIX of GATT 1994.

2. The provisions of this Law shall apply without prejudice to the right of Afghanistan to apply safeguard or other remedies with respect to imports from countries or territories which are not Members of the WTO or which are covered by special or additional rules on the application of safeguard measures.

2. The provisions of this Law shall apply to goods as defined in Article 5(1). It shall not apply to trade in services.

Conditions for Safeguard Measures

Article 4

The Office Board may apply a safeguard measure on a product imported into the territory of Afghanistan only if it has determined, pursuant to an investigation conducted in accordance with the provisions of this Law, that as a result of unforeseen developments, the investigated product is being imported in such increased quantities, absolute or relative

to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products, and that the application of such a measure is in the national interest of Afghanistan.

Definitions

Article 5

For the purpose of this Law:

(1) goods shall mean any movable tangible articles or assets, but not securities, commercial papers, cash, or trade in services.

~~(1)~~(2) serious injury shall mean a significant overall impairment in the position of a domestic industry;

~~(2)~~(3) threat of serious injury shall mean serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility;

~~(3)~~(4) unforeseen developments shall mean circumstances which were not expected or foreseen within the meaning of Article XIX:1(a) of GATT 1994 at the time when obligations under GATT 1994 were incurred and which cause or threaten to cause serious injury to a domestic industry;

~~(4)~~(5) domestic industry shall mean the producers as a whole of products which are like or directly competitive with the investigated product, operating within the territory of Afghanistan; or those producers operating within that territory whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products;

~~(5)~~(6) investigated product shall mean the imported product subject to a safeguard investigation under this Law as described in the notice of initiation set forth in Article 18(1);

~~(6)~~(7) the Office Board shall mean the National ~~Office Board~~ on International Trade and Safeguard Measures;

~~(7)~~(8) interested parties shall mean:

- (i) the exporter(s) and foreign producer(s) of the investigated product;
- (ii) the importer(s) of the investigated product;
- (iii) trade or business association(s) a majority of the members of which are producers, exporters or importers of the investigated product;
- (iv) the government(s) of the exporting country or countries;
- (v) the producer(s) of the domestic like or directly competitive products in Afghanistan;
- (vi) trade and business association(s) a majority of the members of which are producers of the domestic like or directly competitive products in Afghanistan;
- (vii) labor unions or other organizations representing the interests of workers in the domestic industry;
- (viii) consumer associations;

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

~~(8)~~(9) **participating interested parties** shall mean those interested parties that have indicated their interest in participating in an investigation, in accordance with the provisions of Article 17(2) of this Law;

~~(9)~~(10) **Agreement** shall mean the Agreement on Safeguards of the World Trade Organization;

~~(10)~~(11) **Safeguards Committee** shall mean the Committee on Safeguards of the World Trade Organization;

~~(11)~~(12) **WTO** shall mean the World Trade Organization;

~~(12)~~(13) **GATT 1994** shall mean the General Agreement on Tariffs and Trade of 1994;

~~(13)~~(14) **WTO Member** shall mean Member of the World Trade Organization;

~~(14)~~(15) **Country** shall include any WTO Member country and any other country or autonomous customs territory.

CHAPTER II: COMPETENT AUTHORITY

National Office-Board on International Trade and Safeguard Measures

Article 6

1. In furtherance of the objectives of this Law, a National Office-Board on International Trade and Safeguard Measures shall be established by the Ministry of Commerce and Industry. The Office-Board shall conduct its functions, including safeguard investigations and determinations, in an objective and transparent manner.

2. The Office-Board shall be domiciled in Kabul. It shall have national jurisdiction in matters governed by this Law.

3. The Office-Board shall be bound by the provisions of this Law in performing the functions assigned to it and shall perform those functions in an impartial and transparent manner.

4. The tasks of the Office-Board shall be:

- (a) to conduct, at the request of an interested party or on its own initiative, any investigation required for the purposes of this Law and its regulations in order to determine, where appropriate, the application of safeguard measures;
- (b) to issue duly reasoned decisions, in accordance with the rules laid down in this Law and its regulations;

- (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 Industries 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 Finance (Afghanistan Customs Department); and a rotating member of the Afghanistan Chamber of Commerce and Industries representative from the private sector.
4. ~~The A Members~~ may be removed by the Minister of Commerce and Industry only for serious misconduct or infringement of the criminal laws of Afghanistan which are punishable by a minimum of six months imprisonment. Any Member may appeal ~~any~~ such removal decision before a relevant court and such appeal shall be heard and judged by the Court.

Qualifications and Conditions for Office-Board Officials

Article 8

1. The officials of the Office-Board shall:
 - (i) be citizens of Afghanistan having the full exercise of their civil rights;
 - (ii) ~~be practicing lawyers~~ hold degrees in law, ~~economics~~ ists or hold equivalent qualifications and have a reputation of moral integrity; and
 - (iii) have demonstrated expertise in the areas of international trade, administrative or judicial procedures for the settlement of disputes and/or business economics.

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

Quorum and Appeal of Office-Board Decisions

Article 9

1. For the Office's-Board's deliberations to be valid, at least four (4) of its members shall attend and decisions shall be taken by an absolute majority of votes.

2. Where the votes are evenly split with no majority, the President shall cast the decisive vote.

3. The Office's-Board's decisions may be appealed before ~~a competent~~ the Commercial Court within ~~thirty (30)~~ twenty-one (21) working days from the date of issue.

Confidentiality

Article 10

With respect to any proceeding under this Law, the Office-Board shall not disclose any information which is entitled to confidential treatment under this Law. Any person acting under the authority of the Office-Board who discloses such confidential information shall be subject to the disciplinary and criminal penalties as may be applicable.

CHAPTER III: SERIOUS INJURY OR THREAT OF SERIOUS INJURY AND CAUSAL LINK

Serious Injury and Causation

Article 11

1. A determination of whether increased imports of the investigated product have caused or are threatening to cause serious injury to a domestic industry shall be based upon an evaluation of all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular:

- (i) the volume of imports of the investigated product, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in Afghanistan;
- (ii) the share of the domestic market taken by increased imports;
- (iii) changes in the level of sales, production, productivity, capacity utilization, profits and losses and employment -with respect to the domestic industry; and
- (iv) factors other than trends in imports which are causing or may have caused injury to the domestic industry.

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

Article 12

1. A determination of a threat of serious injury caused by increased imports shall be based on facts and not merely on allegation, conjecture or remote possibility.

2. In considering whether increased imports threaten to cause serious injury, the **Office Board** shall evaluate, in addition to the factors cited in Article 11, the following:

- (i) export capacity in the country of origin or export, as it stands or is likely to be in the foreseeable future, and the likelihood that that capacity will be used to export to Afghanistan;
- (ii) the rate of increase of exports to Afghanistan;
- (iii) build-up of inventories in Afghanistan or the countries of origin or export;
- (iv) the probability that exports of the investigated product will enter the Afghan market in increasing quantities; and
- (v) any other factor deemed relevant by the **Office Board**.

CHAPTER IV: INVESTIGATION

Section I: Procedures

Initiation of an Investigation

Article 13

An investigation to determine whether increased imports of the investigated product have caused or threaten to cause serious injury to a domestic industry may be initiated (a) upon a written request addressed to the **Office Board** by or on behalf of a domestic industry; or (b) upon the initiative of the **Office Board**.

Requirements for a Written Request

Article 14

Where a written request for the application of a safeguard measure is addressed to the **Office Board** by or on behalf of a domestic industry, the application, which shall be available free of charge, the application shall normally include such information as is reasonably available to the applicant on the following:

- (i) a complete description of the imported 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 and addresses of the enterprises or entities represented in the application (“the requesting enterprises”), and of all other known producers of the domestic like or directly competitive products;
- (iv) the percentage of domestic production of the like or directly competitive products represented by the requesting enterprises;
- (v) information on the volume and value of the imported product for each of the three calendar years preceding the request, and any more recent partial-year data by country of origin;
- (vi) a description of the increase in imports alleged to exist, in particular, whether such increase is absolute, relative to domestic production, or both;
- (vii) information relevant to the existence of serious injury or threat thereof to the domestic industry, for each of the three calendar years preceding the request, and any more recent partial-year data, including but not limited to:
 - (a) with respect to serious injury:
 1. volume and value of domestic production;
 2. utilization of production capacity;
 3. changes in inventory levels;
 4. market share;
 5. changes in sales levels;
 6. level of employment and wages in the domestic industry;
 7. changes in price levels;
 8. productivity;
 9. profit and loss;
 10. return on investment;
 11. cash flow; and
 12. any other indicators considered relevant.
 - (b) With respect to threat of serious injury, if alleged, also the following:
 1. export capacity in the exporting countries;
 2. inventories in Afghanistan and in the exporting countries; and
 3. information regarding the probability that imports will increase, including, e.g., trade restrictions on exports to third country markets.
- (viii) an explanation, in light of the data provided in the request and the requirements of this Law of the reasons why it is believed that serious injury or threat thereof exists and is caused by increased imports;
- (ix) an explanation and summary of the unforeseen developments that have resulted in increased imports causing or threatening to cause serious injury;

- (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 shall be considered null and void.

Initiation Decision

Article 16

1. The Office-Board may initiate an investigation, whether at the request of a domestic industry or on its own initiative, only when it has determined that there is sufficient evidence of serious injury or threat thereof caused by increased imports. Where a request has been received, the Office-Board may seek such additional information as it deems necessary, including from the requesting enterprises or entities, before deciding whether to initiate an investigation.

2. Where the Office-Board decides not to initiate an investigation in response to a request, it shall notify the requesting enterprises in writing of the reasons for not initiating the investigation within 10 working days.

3. Where a request has been received, the Office-Board shall decide whether or not to initiate a safeguard investigation within 15-10 working days of the date of receipt of the request. When the request involves complex issues, or if the Office-Board has sought additional information as provided for in paragraph 1 above, ~~to~~ the decision shall normally be taken within 30-21 working days.

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 newspapernews 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 ~~30~~ 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 ~~after~~ 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 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 the requesting enterprises, if any, and of all other known producers of the domestic like or directly competitive products;
- (iv) the country or countries of origin of the investigated product;
- (v) a summary of the information on which the allegations of increased imports and serious injury or threat thereof caused by increased imports are based;
- (vi) 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, and a summary of the effect of relevant obligations incurred by Afghanistan under the GATT 1994;
- (vii) contact information: the name, address and telephone number of contact person at the OfficeBoard;
- (viii) statement that the date of initiation is the date of publication of the Notice Regarding Initiation of a Safeguard Investigation;

- (ix) whether or not application of a provisional measure will be considered;
- (x) the proposed schedule for the investigation, including:
 - (1) the date by which interested parties desiring to participate in the investigation must so inform the Office-Board in writing;
 - (2) where application of a provisional measure will be considered, the schedule for and deadlines pertaining to the preliminary phase of the investigation (e.g., the deadline for any written arguments or other submissions);
 - (3) the date by which a hearing, if desired, must be requested; and
 - (4) the proposed dates for the determination regarding application of a provisional safeguard measure, if relevant, for the determination regarding serious injury or threat thereof and causation, and for any decision regarding the application of a safeguard measure.

2. Where the Office-Board has decided not to initiate an investigation, the Notice Regarding Initiation of a Safeguard Investigation should contain the following information:

- (i) the identity of the requesting enterprises, and the domestic products with respect to which initiation was requested;
- (ii) an identification of the imported product;
- (iii) the reasons for not initiating an investigation.

Timetable for the Investigation

Article 19

1. The Office-Board shall complete the investigation within six months from the date of initiation of the investigation.

2. In exceptional circumstances, this time limit may be extended by a further two months.

3. Where the application of a provisional measure will be considered, the Office Board shall normally reach a determination in accordance with the provisions of Article 32 within 15-25 working days from the date of initiation of the investigation. This timeline is subject to the requirement in Article 22(2) to provide sufficient opportunity for interested parties to submit written arguments.

4. During the investigation, the Office-Board shall establish, and shall make known immediately to all participating interested parties, such deadlines as are necessary for the conduct of the investigation.

5. The deadlines established by the Office-Board shall provide sufficient opportunities for all participating interested parties to make their views known on the matters being considered in the investigation. To this end, the Office-Board shall allow sufficient time for

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 the 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. Where such investigations are conducted, the Office-Board shall prepare a report describing the findings of the verification. This verification report, with the exception of any 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 OfficeBoard. 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. ~~or, if~~ such persons indicate that such information cannot be summarized, the reasons why a summary cannot be provided shall 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 non-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 of initiation. Interested parties must be permitted to submit written arguments at least 10 working days prior to ~~no later than 15 days before~~ the date proposed for the determination regarding the application of a provisional safeguard measure.

3. In an investigation in which no hearing is requested, any participating interested party may submit written arguments concerning any matter it considers relevant to the investigation no later than 90-21 working days ~~days~~ before the date proposed for the determination regarding serious injury or threat thereof and causation. Participating interested parties shall have a further 40-7 working days after the deadline for initial written submissions to submit any written responses to the written submissions of other participating interested parties.

4. In an investigation in which a hearing is held, no later than 40-7 working days before the scheduled date of the hearing, any participating interested party may submit written arguments and information concerning any matter it considers relevant to the investigation. Following the hearing, interested parties who participated in the hearing may, within 40-7 working days, submit further written arguments in response to arguments and information presented at the hearing.

Hearings

Article 23

1. The ~~Office-Board~~ shall, upon request of a participating interested party made no later than 45-10 working days after publication of the determination regarding the application of a provisional measure, or if the application of a provisional measure will not be considered, no later than 30-21 working days after initiation, schedule a hearing at which all participating interested parties may present information and arguments orally. Any hearing shall be held no less than 60 days prior to the date proposed for the determination regarding serious injury or threat thereof and causation.

2. There shall be no obligation on any participating interested party to appear at a hearing, and failure to do so shall not be prejudicial to that participating interested party's case. The ~~Office-Board~~ shall, to the maximum extent possible, organize hearings so as to take into account the convenience of the participating interested parties.

3. Participating interested parties intending to appear at a hearing shall notify the ~~Office-Board~~ at least 7-3 working days before the date of the hearing of the names of their representatives and witnesses who will appear at the hearing.

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 OfficeBoard.

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 OfficeBoard; 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 Office 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 Office-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 newspapernews 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 Safeguards 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

Determination Regarding Serious Injury or Threat Thereof and Causation

Article 31

The ~~Office Board~~ shall determine, in conformity with the provisions of Articles 11 and 12, on the basis of objective evidence obtained in the investigation, whether increased imports of the investigated product have caused or threaten to cause serious injury to the domestic industry. This determination shall be published in a report containing a detailed analysis of the information obtained in the investigation and setting forth the ~~Office's Board's~~ findings and reasoned conclusions on all pertinent issues of fact and law. The analysis shall include a demonstration of the relevance of the factors examined by the ~~Office Board~~.

Public Notice and Notification of Determination Regarding Serious Injury or Threat Thereof and Causation

Article 32

1. Immediately upon reaching its determination whether ~~negative or affirmative~~ positive or negative, as to serious injury and threat thereof and causation, the ~~Office Board~~ shall publish a Notice of Determination Regarding Serious Injury or Threat Thereof and Causation in a prominent national ~~newspaper~~ news medium. This notice shall include:

- (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; and

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

(ef) a summary of the information obtained in the investigation, the factors considered and the relevance thereof, and 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 all pertinent information and conform to the requirements established by the Committee Board.

Section III: Definitive Safeguard Measures

General Principle

Article 33

1. Where the Office Board determines:

(a) that increased imports have caused or threaten to cause serious injury to the domestic industry; and

(b) that application of a definitive safeguard measure is in the national interest,

then the Office Board may apply such a measure.

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.

3. In deciding whether to apply a definitive safeguard measure, the Office Board shall take into account the fact that, if adequate trade compensation cannot be agreed with the WTO Members whose exporting interests would be affected by the measure, those WTO Members shall be free, in accordance with the Agreement, to suspend substantially equivalent concessions under GATT 1994, provided that such suspension is not disapproved by the Council for Trade in Goods of the WTO.

4. The Office Board also shall take into account that the right of suspension of equivalent concessions shall not be exercised for the first three years that a safeguard measure is in effect, including the period of application of any provisional safeguard measure, provided that the measure has been taken as a result of an absolute increase in imports.

s:

5. A definitive safeguard measure shall not be applied to goods that are already en-route to Afghanistan on the date that the Notice Regarding Application of a Definitive Safeguard Measure in Article 34 is published.

Notice Regarding Application of a Definitive Safeguard Measure

Article 34

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 the 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 and 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 any provisional safeguard measure) is more than one year, a timetable for the progressive liberalization of the measure; and

(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 its 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 notify 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~~ apply to imports of the investigated product originating in a developing country WTO Member as long as those imports account for no more than three (3) per cent of total imports of the investigated product in Afghanistan.

2. Notwithstanding paragraph 1 above, if imports from developing country WTO Members which individually account for less than three (3) per cent of Afghanistan's imports of the investigated product collectively account for more than nine (9) 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 those 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. In allocating the quota among supplying countries,

the Office-Board 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 paragraph 3 and 4 above, in a case in which serious injury to the domestic industry has been found, the Office-Board may allocate the quota among supplying countries on a different basis, provided that consultations have been held with supplying WTO Members under the auspices of the Safeguards 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 the investigated product during the representative period;
- (b) the reasons for the departure from the methodology for quota allocation envisaged under paragraphs 3 and 4 above are justified; and
- (c) the conditions of such departure are equitable to all suppliers of the product concerned.

6. Notwithstanding the provisions of Article 43, a definitive safeguard measure in the form of a quota allocated on the alternative basis provided for in paragraph 5 above shall not be extended beyond the initial period of its application.

Notification in the Event of Termination of an Investigation With No Safeguard Measure Applied

Article 39

If at any point during an investigation, the Office-Board terminates the investigation with no definitive safeguard measure applied (e.g., in the event of a negative serious injury finding, or in the event that application of a definitive safeguard measure is determined not to be in the national interest), the Government of Afghanistan shall immediately notify the Safeguards Committee, in conformity with the requirements established by the Committee.

Duration of a Definitive Safeguard Measure

Article 40

1. 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 Article 43.

2. 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 Article 43, shall not exceed ten years, in accordance with the provisions of Articles 7.3 and 9.2 of the Agreement.

Progressive Liberalization

Article 41

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, not later than the mid-term of the period of application of the measure, the ~~Office-Board~~ shall examine the situation, through a review conducted in accordance with the procedures set forth in Articles 17 through 25 of this Law, *mutatis mutandis*, including a review of the effects of the definitive safeguard measure on the domestic industry concerned, and of the industry's progress in implementing its adjustment plan. The results of the review shall be published in a report prepared by the ~~Office-Board~~ and, based on the results of the review, the ~~Office-Board~~ shall decide to maintain or withdraw the definitive safeguard measure or to increase the pace of its liberalization.

2. A Notice to Maintain, Liberalize or Withdraw a Definitive Safeguard Measure, summarizing the results of the review, shall be published in a prominent national ~~newspaper~~ news medium. The contents of such notice shall conform, *mutatis mutandis*, to the requirements for the Notice Regarding Application of a Definitive Safeguard Measure provided for in Article 34.

3. The Government of Afghanistan shall notify the results of the review, including the withdrawal or any modification of the definitive safeguard measure, to the WTO Council for Trade in Goods through the Safeguards Committee, in conformity with the requirements established by the Committee.

Section V: Extension and Reapplication of a Definitive Safeguard Measures

Extension of a Definitive Safeguard Measure

Article 43

1. If the domestic industry considers that there is a continuing need to apply a definitive safeguard measure beyond the initial period of application, it shall submit a written request for an extension of the measure, including evidence that the industry is carrying out its adjustment plan, to the ~~Office-Board~~ not less than six months before the end of that period. The ~~Office-Board~~ shall conduct an investigation to determine whether an extension is warranted. For the purpose of such investigation and determination, the procedures set forth in this Law for applying the original measure shall be followed, *mutatis mutandis*.

2. Subject to the provisions of Article 38.6, 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 *mutatis 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 for 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

Article 45

1. This Law shall be applied in conformity with the obligations of Afghanistan under the Agreement Establishing the World Trade Organization, done at Marrakesh, on 15 April 1994, including the General Agreement on Tariffs and Trade 1994 and the Agreement on Safeguards annexed thereto, immediately after Afghanistan becomes a Member.
2. This Law shall be without prejudice to the rights of Afghanistan to take safeguard or other protective remedy actions vis-à-vis countries and territories which are not Members of the WTO, or which are subject to special or alternative safeguard disciplines.
3. Prior to Afghanistan's accession to the WTO, this Law shall in no way be interpreted as to restrict Afghanistan's right to apply safeguard measures against both Members and non-Members of the WTO.

Entry into Force and Applicability

Article 46

This Law shall enter into force ~~thirty-ninety (90)~~ days following its publication in the Official Gazette.