



**Dear Readers,**

Welcome to a new edition of our newsletter.

**1. Costs of doing business in Myanmar**

DICA has published a “Cost of Doing Business in Myanmar - Survey Result 2017” on its homepage <http://tinyurl.com/hlegoah>. It was prepared with the help of JICA and Myanmar Survey Research and is without doubt the most comprehensive publication on this topic so far. 200 pages with valuable information, right down to the costs for building a pipeline. Definitely worth downloading for anybody in need of getting an initial grasp of the costs of doing business in Myanmar.

**2. Law to Prevent an Increased Quantity of Imports (Draft)**

As reported in our last newsletter, state-owned papers published a few days back the draft of a “Law to Prevent an Increased Quantity of Imports.” We have translated the draft in the meantime; please find the translation in our newsletter.

The title of the draft sounds probably more dramatic than its contents. If enacted, the law will implement the Agreement on Safeguards (<http://tinyurl.com/jxvfmam>), a WTO agreement allowing member states to increase tariffs and/or restrict imports in order to prevent serious injury or the threat thereof to a domestic industry. Because such measures target legitimate trade (as opposed to, e.g., dumping), an exporting state may in principle request compensation for lost trade.

Myanmar producers have (rightfully) complained that cheap imports from Thailand and China seriously put their industry at risk (one of the more recent stories - about how chicken breeders in Mandalay see their business threatened by cheaper imports - can be found here: <http://tinyurl.com/jnn6pcb>), but our understanding is that most of these imports enter the country by border trade of which a large portion consists of smuggling.

Such illegal imports are not within the scope of the WTO Agreement on Safeguards (and, by consequence, also not within the scope of the draft of the Law to Prevent an Increased Quantity of Imports and its formal procedure by which Myanmar could restrict legitimate imports). Rather, the Ministry of Commerce could simply seize the illegally imported goods (but this is a capacity problem).



### **3. Ministry of Commerce and Central Bank to exchange information in order to force exporters to repatriate their earnings**

We reported in one of the previous newsletters that the Central Bank has, against the background of paragraphs 35-40 of the Foreign Exchange Management Rules (<http://tinyurl.com/z2efxf>), instructed commercial banks to report their customers if they do not repatriate their export earnings to Myanmar within six months after the export.

Now, it appears that the Central Bank is cooperating with the Ministry of Commerce to enforce this instruction (<http://tinyurl.com/zep59qm>). The background seems to be that Ministry of Commerce data suggests that the freight-on-board value of goods exported between January and August 2015 was Ks. 4.95bn, whereas the repatriated earnings received on domestic bank accounts for the same period were only Ks. 3bn. The Central Bank now seems determined to analyze this data to find out the discrepancies in individual transactions between the value of goods declared at customs when exporting and the repatriated earnings.

It is clear that this measure is likely to trap those exporters honest enough (or forced by necessity) to export through official channels and not those engaged in outright smuggling.

### **4. Market access and tenders**

- (a) **Yangon Region Government seems to have invited Uber to partly replace the present taxi system:** <http://tinyurl.com/z5oul8d>
- (b) **Sembcorp signed BOT agreement for 225MW gas-fired Myingyan power plant** - first project in Myanmar scheduled to receive funding from Chinese-led Asian Infrastructure Investment Bank: <http://tinyurl.com/jg7g2vs>
- (c) **Memorandum of understanding on tourism cooperation signed by Myanmar and Thailand** to promote maritime tourism on Andaman coast: <http://tinyurl.com/hz2s6a6>  
(It should be noted in this context that investments in the tourism sector is still a rather local affair - see e.g. here: 1,432 hotel licenses issued, including 27 with foreign investment: <http://tinyurl.com/h7rjnl5>)
- (d) **Tender:** Department of Rural Development: Supply of vehicles; survey equipment for a mini-grid project; laptops; MIS server; Microsoft Office 2016 (IDA funded): <http://tinyurl.com/zjcntms>



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- (e) **Tender:** Department of Agriculture, Livestock and Irrigation: Supply of tractors (World Bank funded): <http://tinyurl.com/gvbvgdy>
- (f) **Tender:** Myanma Petroleum Purchase Enterprise: Supply of Mogas: <http://tinyurl.com/hen6hll>
- (g) **Tender:** Myanma Oil and Gas Enterprise: Supply of spares for water/oil pump motors; gas supply accessories; hydraulic oil light: <http://tinyurl.com/j9sixa2>
- (h) **Tender:** Ministry of Agriculture, Livestock and Irrigation: Supply of vehicles, motor cycles, office equipment, aircons, telecommunication equipment, office furniture (World Bank funded): <http://tinyurl.com/gm85eou>
- (i) **Tender:** Myanma Timber Enterprise: Sale of teak and hardwood logs: <http://tinyurl.com/jmpn24o>
- (j) **Tender:** Ministry of Agriculture, Livestock and Irrigation: Supply, delivery, installation and maintenance of mobile laboratory equipment (including vehicle with two trailers) - KfW funded: <http://tinyurl.com/jju6lcc>

We trust that you will find this newsletter useful and hope that you will enjoy reading it.

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director



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### Press review (17 - 23 January 2017)

- Calls on government to scrap Tigyit coal plant in Shan State in favour of hydropower: <http://tinyurl.com/jswp4xb>
- Ministry of Commerce cracks down on unreported export earnings: <http://tinyurl.com/zep59qm>
- First Myanmar-assembled Nissan cars go on sale: <http://tinyurl.com/hexa338>
- Tax cuts coming for low-cost housing: <http://tinyurl.com/zgj3gye>
- Central Bank plans level playing field for foreign payment firms: <http://tinyurl.com/z5f5hvs>
- Memorandum of understanding on tourism cooperation signed by Myanmar and Thailand to promote maritime tourism on Andaman coast: <http://tinyurl.com/hz2s6a6>
- Sembcorp signed BOT agreement for Myingyan power plant: <http://tinyurl.com/jg7g2vs>
- CB Bank pursues self-service banking in Myanmar: <http://tinyurl.com/zm4s2fu>
- Yangon Region to get agricultural master plan: <http://tinyurl.com/gtfw9zx>
- Nay Pyi Taw hoteliers to address empty rooms: <http://tinyurl.com/gur66hh>
- 1,432 hotel licenses issued, including 27 with foreign investment: <http://tinyurl.com/h7rjn15>
- Property market health hinges on installment lending: <http://tinyurl.com/jyjcszm>



**Draft Law to Prevent an Increased Quantity of Imports**

(2017, Pyidaungsu Hluttaw Law Number ---)

1378, ----- date

(2017, -----month-----date)

The Pyidaungsu Hluttaw has enacted this law.

**Chapter (1)**

**Title, entering into force and definitions**

- (1) (a) This law shall be called the Law to Prevent an Increased Quantity of Imports.
- (b) This law shall enter into force on the date specified by notification of the President.
- (2) The expressions included in this law are defined as follows:
  - (a) **“Safeguard measure”** means a measure for prevention and remedy if increased imports in Myanmar cause, to domestic producers, a serious injury, or threat of a serious injury, with regard to the like or directly competitive product. The measure consists of preliminary prevention by administering tariffs, prevention by administering tariffs, or a restriction of imports.
  - (b) **“Increased import”** means a quantity of any kind of import in Myanmar which is, in absolute or relative terms, significantly higher than the amount of domestic production of the like or directly competitive product.
  - (c) **“Domestic producer”** means the following person or organization:
    1. A producer of the like or directly competitive product within the country.
    2. A producer that produces a similar product which is combined with raw materials from abroad but with a higher proportion of raw materials from a domestic or directly competitive producer.
  - (d) **“Serious injury”** means a condition which causes an overall impairment in the position of domestic producers.
  - (e) **“Threat of a serious injury”** means a condition which causes a threat of an overall impairment in the position of domestic producers.



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- (f) **“Like product”** means a domestic product whose feature is the same as, or similar to, that of an investigated product.
- (g) **“Directly competitive product”** means a domestic product whose chemical composition or other features such as the physical appearance or techniques are different from an investigated product, but which can be substituted by an investigated product according to its intended use in a competitive market.
- (h) **“Investigated product”** means an import from abroad which is investigated under this law.
- (i) **“Concerned parties”** means a producer who produces an investigated product, a like or directly competitive product, an organization which can represent the interests of workers from this business, a seller, an importer, a traders’ organization, and a producer from abroad who produces an investigated product, an exporter, an organization relating to an exporter, and their governments.
- (j) **“Tariff for preliminary prevention”** means a tariff under the Customs Act and additional tariffs, to be paid during the investigation period under this law, in order to prevent a serious injury, or threat of a serious injury, to domestic producers.
- (k) **“Tariff for prevention”** means a tariff under the Customs Act and additional tariffs, to be paid according to a decision after the investigation, in order to prevent a serious injury, or threat of a serious injury, to domestic producers due to increased imports.
- (l) **“Restriction of imports”** means a restriction, according to a decision after the investigation, to import an investigated product in order to prevent a serious injury, or threat of a serious injury, to domestic producers due to increased imports.
- (m) **“Developing country”** means a country which is included in the United Nations’ list of names of developing countries.
- (n) **“Committee”** means the committee which is formed under this law to prevent an increased import.
- (o) **“Ministry”** means the Ministry of Commerce.
- (p) **“Administration Department”** means an administration department which is authorized by the Ministry to operate a safeguard measure.



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- (q) “**Investigation team**” means a team which is authorized by the Committee to perform tasks as prescribed in this law.

### Chapter (2)

#### Objective

- (3) The objectives of this law are as follows:
- (a) Making it possible to apply a safeguard measure for prevention and remedy when there is, due to an increased import, a serious injury or threat of a serious injury to domestic producers that produce the like or directly competitive product.
  - (b) Making it possible for domestic producers to compete during a certain period.
  - (c) Administering sufficiently high tariffs on an import in order to prevent and remedy an injury if the injury is due to an increased import.

### Chapter (3)

#### Forming the Committee to prevent an increased import, and its duties

- (4) The Government :
- (a) Shall form the Committee to prevent an increased import with not more than nine persons from the following departments:
    - (1) Union Minister, Ministry of Commerce Chairman
    - (2) Deputy Minister, Ministry of Planning and Finance Vice-chairman
    - (3) Government officials whose positions are higher than the Deputy Director General from the relevant Ministry of Commerce; Finance; Foreign Affairs; Agriculture; and Labour Members
    - (4) General Director of the Administration Department Secretary
  - (b) Can, when forming the Committee under sub-section (a), establish a joint-secretary if this is necessary.
  - (c) Can, if necessary, reform the Committee formed under sub-section (a).



- (5) The duties and powers of the Committee are as follows:
- (a) Deciding if the Committee should examine an initial instruction submitted by the Administration Department regarding a safeguard measure.
  - (b) Authorizing an investigation team to perform investigations and make suggestions under this law.
  - (c) Examining the investigations and suggestions submitted by an investigation team through the Administration Department.
  - (d) Deciding to set, update and amend a safeguard measure.
  - (e) Making suggestions to the Union Ministry for efficiently implementing this law.
  - (f) Asking, in order to implement this law, relevant departments for required accounts, facts and evidence.
  - (g) Delegating power of the Committee to the Administration Department and investigation team.
  - (h) If necessary, forming branch Committees.

#### **Chapter (4)**

##### **Authorizing the Administration Department, and its duties**

- (6) The Union Ministry shall authorize the Administration Department to perform tasks of the Committee and investigation team.
- (7) The duties of the Administration Department are as follows:
- (a) Submitting an application for a safeguard measure to the Committee if the evidence is sufficient.
  - (b) Supervising the investigation team.
  - (c) Reporting the investigation team's investigations and suggestions to the Committee.
  - (d) Keeping the accounts, facts and evidence which are received from the relevant departments and organizations.
  - (e) Performing the tasks of the Committee and investigation team.





- (f) Performing other duties which are requested by the Committee.

## **Chapter (5)**

### **Forming an investigation team, and its duties**

#### **Forming an investigation team**

- (8) The Committee shall form and authorize an investigation team with employees of the Administration Department who are professionals in their field in order to perform an investigation and other duties under this law.

#### **The duties and powers of the investigation team**

- (9) The duties and powers of the investigation team are as follows:
  - (a) Examining, under the authorization of the Committee, a serious injury or threat of a serious injury to domestic producers due to an increased import.
  - (b) Requesting, for the investigation, required accounts, facts and evidence from concerned parties.
  - (c) Arranging, during the investigation period, a submission in writing or an oral submission regarding accounts, facts, evidence and opinions from concerned parties.
  - (d) Keeping, if necessary, accounts, facts and evidence regarding the investigation.
  - (e) Submitting to the Committee, through the Administration Department, the investigation *[result]* regarding a serious injury or threat of a serious injury to domestic producers due to increased imports, and suggestions regarding types, number and period of the measure(s).
  - (f) Performing other duties which are requested by the Committee.

## **Chapter (6)**

### **Instruction and investigation**

#### **Initial instruction**



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- (10) A domestic producer who suffers a serious injury due to an increased import or a representative of such producer shall apply for the application of a safeguard measure with the specified application form.
- (11) The Administration Department shall, within 5 working days after the date of receipt of the application form, initially instruct *[the Committee]* to investigate if the specified evidence is included *[in the application]*, and then submit *[the application]* to the Committee.
- (12) The Committee shall make the following decision according to the initial instructions of the Administration Department:
  - (a) Requesting resubmission if evidence and facts are inadequate.
  - (b) Deciding whether to investigate.
  - (c) Forming and authorizing an investigation team if the Committee decides to investigate.

#### **Investigation**

- (13) The investigation team under section (12) (c) shall begin to investigate, on the date that it was authorized, the increased import and the injury caused by the increase.
- (14) The investigation team shall notify applicants and the concerned parties of the investigation.
- (15) The investigation team can, when investigating and with the permission of the Committee, request required accounts, facts and evidence from the concerned parties and from the relevant department and organization.
- (16) The investigation team can, when investigating, send questions to the concerned parties, conduct a public hearing or use other appropriate ways.

#### **Conserving confidential information**

- (17) The investigation team shall, when investigating, keep confidential information confidential.
- (18) The Committee, Administration Department and investigation team are not allowed to disclose confidential information and evidence without permission of the concerned party.
- (19) The investigation team shall request the concerned party to submit non-confidential summaries if they are required in a process of confidential submission. If the concerned party fails to submit these summaries, the investigation team shall ask for the reason.



- (20) The investigation team shall disregard facts if it does not believe that the accounts, facts and evidence are confidential or if it does not obtain permission from the concerned party to distribute a non-confidential summary to the public.

**Chapter (7)**

**Determining an injury and administering tariffs for preliminary prevention**

**Determining an injury**

- (21) When an investigation team is determining whether there is a serious injury or threat of a serious injury to a domestic producer due to an increased import, the following facts, and other required facts, regarding the business of the producer shall be considered:
- (a) The rate and amount of the increased import
  - (b) The share of the increased import in the domestic market
  - (c) Change of a sales situation
  - (d) Change of a production situation
  - (e) Change of the productivity and capacity
  - (f) Change of the profit and injury situation
  - (g) Change of the employment situation
- (22) The investigation team shall determine that a product causes a serious injury or threat of a serious injury only if there is a causal connection between the increased import and the serious injury, or threat of a serious injury, to the businesses of domestic producers.
- (23) The investigation team cannot hold that an injury is caused by an increased import if it finds that the injury to the businesses of domestic producers is due to other causes.

**Administering tariffs for preliminary prevention**

- (24) The investigation team shall submit, to the Committee, to apply a preliminary administration with regard to a product which is imported during the investigation period if it finds, upon the initial instruction, that the injury to the businesses of domestic producers is a serious emergency *[for the producer]*.



- (25) (a) The Committee can administer an appropriate tariff for preliminary prevention under section 24 before making a final decision.
- (b) When administering a tariff for preliminary prevention, the maximum period to administer *[the tariff]* can only be 100 days.

## **Chapter (8)**

### **Making a decision on a safeguard measure, and implementation**

#### **Making a decision on a safeguard measure**

- (26) The investigation team shall, after investigating within the specified period, submit the final investigation result and suggestions to the Committee through the Administration Department.
- (27) The Committee shall terminate a preliminary safeguard measure if it finds, under section 26, that there is no serious injury, no threat of a serious injury, or no increased import.
- (28) The Committee can apply one of the following safeguard measures or both of them in order to control an investigated product if it finds, under section 26, that there is an increased import and a serious injury:
- (a) Collecting a preventive tariff at the specified rate
- (b) Restricting the import amount
- (29) The Committee can apply a safeguard measure with the required condition only in order to rebuild the businesses of domestic producers and to prevent and remedy their injury.

#### **Restricting the import quantity**

- (30) The Committee can specify a restricted quantity which is lower [*“is lower” - literal translation; should probably read “is not lower”*] than the average quantity of the investigated product in the last three years if it finds that there is sufficient reason to prevent or remedy an injury under section 29.



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- (31) The Committee shall discuss and obtain the agreement of all member states that export and sell the investigated product and make profits in Myanmar if it desires to restrict the import quantity.
- (32) If the Committee does not obtain an agreement under section 31, it shall specify a restricted quantity depending on the total quantity or the ratio of an import that was sold in the last three years in Myanmar by the above-mentioned countries.
- (33) The Committee shall not apply a safeguard measure for an investigated product if it is imported from developing countries to Myanmar and it fulfills one of the following conditions:
- (a) The import quantity from the developing country represents a share which is not higher than 3 percent of the total quantity of the import in Myanmar.
  - (b) The import quantity from all developing countries represents a share which is not higher than 9 percent of the total quantity of the import in Myanmar.

#### **Refunding customs duty for preliminary prevention**

- (34) The relevant department shall, without delay, refund customs duty for preliminary prevention if the Committee makes one of the following decisions:
- (a) Decision to refund the difference if the tariff for prevention after the final investigation is lower than the collected customs duty for preliminary prevention.
  - (b) Decision to refund the collected customs duty for preliminary prevention if there is a reason to terminate a safeguard measure under section 27.

#### **Chapter (9)**

#### **Notifying and requesting information**

#### **Notifying**

- (35) The Administration Department shall notify the following decisions of the Commission:
- (a) Notify, to the applicants and concerned parties, a decision not to investigate.
  - (b) Notify, to the public in an appropriate way, a decision to start an investigation.



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- (c) Notify, to the public without delay, a decision in connection with administering tariffs for preliminary prevention under section 25(a).
  - (d) Notify, to member states, concerned parties and the public without delay, a final decision on the application, extension or termination of a safeguard measure.
- (36) The Committee shall notify, to the World Trade Organization and the Committee on Safeguards without delay, a final decision in connection with the start of an investigation and the application, extension or termination of a safeguard measure.

#### **Requesting information**

- (37) If necessary, the Committee can request, through the embassy of the relevant member state or in another way agreed between the relevant member states, evidence regarding an investigation from a foreign exporter, producer and government of the relevant member state.
- (38) The foreign exporter, producer and government of the relevant member state shall reply to the request under section 37 to the Committee directly, through the embassy of the relevant member state or in another way agreed between the relevant member states within 15 days after having received the notice or within an extension period permitted by the Committee.
- (39) The concerned parties shall submit facts and evidence as a summary if the investigation team requests confidential facts and evidence. If they fail to submit, they shall provide a good reason.

#### **Chapter (10)**

#### **Period for applying a safeguard measure, reduction and review**

##### **Application period**

- (40) The application period can only be as long as is required to rebuild the businesses of domestic producers and prevent and remedy its injury under section 29.
- (41) When a safeguard measures is being applied:
- (a) The application period with regard to a type of product shall be four years at most.



- (b) The application period with regard to a type of product under section (a) and an extension period shall be ten years at most.
  - (c) If the application period of a safeguard measure for a product is finished and it is desired to re-apply the measure, a minimum of two years must have passed until the safeguard measure can be applied again.
- (42) The Committee can allow an extension of the application period of a safeguard measure if it assumes that the evidence submitted by a domestic producer is appropriate. The safeguard measure applied in this extension period may not be more restrictive than the safeguard measure in force.
- (43) The Committee can apply a safeguard measure with a duration of 180 days or less again to an import in the following circumstances:
- (a) At least one year has passed since the introduction of the safeguard measure.
  - (b) The safeguard measure has not been applied more than twice to the same product within five years from the date on which the safeguard measure was introduced.

**Reduction of the measure**

- (44) The Committee can reduce the measure step by step if the application period of a safeguard measure under section 29 is more than one year.

**Review**

- (45) With regard to a safeguard measure whose duration is more than three years, the investigation team shall, from time to time, report a review to the Committee as to whether the safeguard measure should continue to be applied, reduced or terminated.

**Non-discriminatory administration of a safeguard measure**

- (46) When a safeguard measure under section 25 and 29 is applied among member states, there shall be no discrimination between exports from any country of origin except the concession that is provided to developing countries.



**Chapter (11)**

**International obligations**

- (47) This law shall be implemented to reflect that Myanmar has to comply with its obligations as a member under the agreements of the World Trade Organization formed on 15<sup>th</sup> April 1994 and the General Agreement on Tariffs and Trade including the Agreement on Safeguards enacted in 1994.
- (48) Myanmar has promised to comply with its obligations as a member of international or regional agreements and if the provisions of this law violate these obligations, Myanmar shall only comply with the regulations of these agreements.

**Chapter (11)**

**General**

- (49) The concerned parties shall submit the relevant evidence regarding a matter being investigated to the Committee in accordance with the procedures during the investigation period if the matter affects a public interest.
- (50) The concerned parties shall act in accordance with the procedures issued, in application of a safeguard measure under section 29, by the Ministry of Planning and Finance regarding a preventive tariff and by the Ministry regarding the restriction of an import.
- (51) Administering a tariff under section 25(a) and 28(a), and refunding a tariff under section 34 shall be done in compliance with the regulations and procedures of the relevant tax law and customs law.
- (52) The Ministry shall be obliged to bear the expenses of the Committee and investigation team.
- (53) When the provisions of this law are being implemented:
- (a) The Ministry can issue the required rules and regulations with the agreement of the Union Government.
  - (b) The Ministry and the Committee can issue the required notifications, orders, directives and procedures.





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