

COUNTERVAILING DUTIES RULES

NOTIFICATION

S.R.O. 599(I)/2002.- In exercise of the powers conferred by section 34 of the Countervailing Duties Ordinance, 2001 (I of 2001), the Federal Government is pleased to make the following rules, namely:-

1. Short title and commencement. — (1) These rules may be called the Countervailing Duties Rules, 2002.

(2) They shall come into force at once.

2. Definitions. — (1) In these rules, unless there is anything repugnant in the subject or context, —

- (a) “application” means an application made under section 11 of the Ordinance;
- (b) “Ordinance” means the Countervailing Duties Ordinance, 2001 (I of 2001); and
- (c) “Schedule” means the Schedule annexed to these rules.

(2) All words and expressions used but not defined shall have the meaning assigned to them in the Ordinance.

3. Disclosure in application. - An application shall, contain the information specified in section 11 of the Ordinance, as is reasonably available to an applicant on the following, namely:-

- (a) name, address, telephone number, facsimile number and electronic mail address of the applicant;
- (b) the identity of domestic industry by or on behalf of which the application is being made including the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses of all other known producers or association of producers which is a trade organisation as defined in the Trade Organisations Ordinance, 1961 (XLV of 1961), and has been granted or deemed to have been granted a licence thereunder in respect of the concerned domestic industry;
- (c) information relating to the degree of domestic industry support for the application including volume and value of domestic production of a like product by the applicant and by each domestic producer identified;

- (d) a complete description of an allegedly subsidised product including the technical characteristic and uses and its current customs tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969).
- (e) the name of exporting country, identity of each known exporter or foreign producer, and a list of known persons importing the product in question;
- (f) evidence with regard to the existence, amount, nature and countervailability of subsidy in question;
- (g) information on changes in volume of allegedly subsidised imports, the effect of those imports on prices of a like product in domestic market and the consequent impact of the imports on domestic industry as demonstrated by relevant factors and indices having a bearing on the state of domestic industry, such as those listed in the explanation to sub-section (1) of section 9, and in sub-section (3) of section 9 of Ordinance.
- (h) the exporter(s) or producer(s) the applicant believes sells the allegedly subsidized product and the proportion of total exports to Pakistan that exporter or producer accounted for during the most recent twelve-month period;

4. Commission to avoid publicizing application. — The Commission shall not, unless a decision has been made to initiate an investigation, publicize an application.

5. Initiation of investigation. — The Commission shall normally decide whether or not to initiate an investigation within a period of forty-five days of the date of receipt of an application compliant with the requirements of section 11 of the Ordinance and rule 3:

Provided that when such application involves complex issues, or if the Commission has sought additional information from an applicant, the time period may, if the Commission so deems fit, be extended to sixty days.

6. Disclosure in notice of initiation of an investigation. — The notice of initiation of an investigation referred to in sub-section (14) of section 11 of the Ordinance shall contain adequate information on the following, namely: —

- (a) The name of the country or countries of export, and if different, the country or countries of origin of an investigated product;
- (b) a complete description of an investigated product including the technical characteristics and uses of such product and its current

tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969);

- (c) a description of the alleged subsidization to be investigated including the basis for such allegations;
- (d) a summary of the factors on which the allegations of injury are based;
- (e) the address where information and comments may be submitted and the time period allowed to interested parties for making their views known;
- (f) the date of initiation of an investigation (being the date of publication of notice); and
- (g) the proposed schedule for an investigation.

7. Acquisition of information. — (1) Subject to sub-rule (2), the Commission shall solicit, gather, obtain, accept or reject information for the purposes of an investigation in accordance with the following, namely: —

- (a) Upon initiation of an investigation, the Commission shall send questionnaires to any person it believes may have information relevant to an investigation including known domestic producers, importers, exporters and foreign producers and, such questionnaires may require such information, as the Commission deems necessary;
- (b) the Commission may disregard any reply to a questionnaire, which is not submitted within the time provided or in the form requested;
- (c) the Commission may, during the course of an investigation, request further information from interested parties, in the form of supplementary questionnaires, or written requests for clarification or additional information and such requests shall state the date by which reply is due and sufficient time shall be granted by the Commission in order to allow meaningful replies; and
- (d) any interested party may, on its own initiative, submit to the Commission, in writing, any information it considers relevant to an investigation and the Commission shall consider such information unless such consideration would be unduly burdensome to the Commission or disrupt the timely progress of an investigation.

(2) Any factual information relevant to the determination of the amount of subsidy or injury voluntarily submitted shall be considered by the Commission only if it is received in writing no later than two weeks prior to the date of provisional determination.

(3) An applicant shall provide all information reasonably required by the Commission subsequent to the filing of an application to enable it to proceed with an investigation pursuant to sub-section (3) of section 11 of the Ordinance.

8. Preliminary written arguments. — Not later than fifteen days before the scheduled date of provisional determination, interested parties may submit written arguments to the Commission concerning any matter relevant to an investigation.

9. Disclosure in notice of provisional measures. — The notice of provisional measures referred to in sub-section (3) of section 25 of the Ordinance shall contain the following information in addition to the information specified in the said sub-section, namely: —

- (a) The names of the known exporters and producers of an investigated product;
- (b) description of an investigated product which is sufficient for customs purposes including the current customs tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969);
- (c) the amount of subsidy, if any, found to exist and the basis for such determination including a description of the methodology used in determining the amount of countervailable subsidy;
- (d) the factors that have led to the determination of injury including information on factors other than subsidized imports that have been taken into account; and
- (a) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury caused during an investigation.

10. Request for hearing. — Any request for a hearing by an interested party shall be made not later than thirty days of the date of publication of notice of provisional measures.

11. Procedure for on the spot investigation. — For the purposes of a verification visit under section 26 of the Ordinance, the Commission shall carry out on the spot investigation in accordance with the procedure as provided in Schedule I.

12. Written arguments. — (1) In an investigation in which no hearing is requested, any interested party may submit written arguments to the Commission concerning any matter it considers relevant to an investigation not later than forty-five days before the date proposed for final determination.

(2) In an investigation in which a hearing is held, any interested party may, not later than ten days before the specified date of a hearing, submit written arguments to the Commission concerning any matter it considers relevant to an investigation. Following such a hearing, interested parties who participated in the hearing may, within ten days, submit further written arguments to the Commission in response to arguments and information presented at the hearing.

13. Procedure for a hearing. — (1) The Commission shall, upon a request made under rule 10, hold a hearing at which all interested parties may present information and arguments:

Provided that such a hearing shall be held not later than sixty days prior to the date proposed for final determination.

(2) There shall be no obligation on any interested party to attend a hearing, and failure to do so shall not be prejudicial to that interested party's case.

(3) A hearing shall, to the extent possible, be organized by the Commission so as to take into account the convenience of the interested parties.

(4) At least seven days before the date of a hearing interested parties intending to appear at the hearing shall notify the Commission of the names of representatives and witnesses who shall appear at the hearing

(5) A hearing shall be organized in such manner so as to ensure that all parties participating have an adequate opportunity to present their views.

(6) The Secretary to the Commission shall maintain the record of a hearing, which subject to the requirement to protect confidential information under section 29 of the Ordinance be promptly placed in the public file to be maintained under section 39 of the Ordinance.

14. Disclosure before final determination. — (1) After a hearing has been held and the Commission has completed verification of information collected in the course of an investigation and, in any event, at least thirty days before the proposed date for final determination, the Commission shall inform all interested parties, in writing, subject to the requirement to protect confidential information under section 29 of the Ordinance, of the essential facts under consideration which shall form the basis of a decision whether to apply definitive measures under the Ordinance:

Provided that such information shall not indicate whether a final determination is affirmative or negative.

(2) Interested parties may submit comments, if any, on the information disclosed to them by the Commission pursuant to sub-rule (1), in writing, not later than fifteen days after such disclosure by the Commission.

15. Disclosure in the notice of final determination. — The notice of final determination provided for in sub-section (3) of section 25 of the Ordinance shall, in addition to the information required under the Ordinance, contain the following information, namely:-

- (a) The names of the known exporters and producers of an investigated product;
- (b) description of an investigated product which is sufficient for customs purposes, including the current tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969);
- (c) the amount of subsidy, if any, found to exist and the basis for such determination including a description of the methodology used in determining the amount of countervailable subsidy;
- (d) the factors that have led to the determination of injury within the meaning of the Ordinance including information on factors other than subsidized imports that have been taken into account;
- (e) any other reasons leading to final determination; and
- (f) the reasons for the acceptance or rejection of relevant arguments or claims made by exporters and importers.

16. Disclosure after final determination. — (1) After publication of the notice of final determination, the Commission shall, on request made within fifteen days of the publication of the notice of final determination, hold separate disclosure meetings with exporters or producers requesting such a meeting, to explain the subsidy calculation methodology finally applied for that exporter or producer.

(2) The Commission shall provide an opportunity to the exporters or producers or their legal representatives to examine and receive copies of the subsidy calculations done by the Commission for their exports to Pakistan.

17. Disclosure in application for refund of countervailing duty collected. — (1) An application under section 22 of the Ordinance for refund of countervailing duty collected shall contain the following information, namely:-

- (a) The amount of refund of countervailing duty claimed for the period;
- (b) all customs documentation relating to calculation and payment of such amount; and
- (c) sufficient information to enable the Commission to calculate the amount of subsidy for the period for which the refund is requested.

18. Disclosure in notice of acceptance of undertaking. — The notice of acceptance by the Commission of an undertaking referred to in sub-section (3) of section 25 of the Ordinance shall also contain the following information, namely:-

- (a) The names of the known exporters and producers of an investigated product;
- (b) description of an investigated product which is sufficient for customs purposes including the current customs tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969);
- (c) the amount of subsidy found to exist and the basis for such determination; and
- (d) the factors that have led to the determination of injury including information on factors other than subsidized imports that have been taken into account;

19. Fee payable under the Ordinance.— The fee payable to the Commission at the time of submission of an application under section 11 of the Ordinance shall be in the amount as specified in Schedule II.

20. Reviews. — The provisions of sections 11 and 12 of the Ordinance and rule 3 shall, mutatis mutandis, apply to any review carried out under sections 19, 20 or 21 of the Ordinance.

SCHEDULE I
[See rule 11]

PROCEDURE FOR ON THE SPOT INVESTIGATION

1. Upon initiation of an investigation, the government an exporting country and the firms known to be concerned should be informed of the intention to carry out on the spot investigation by the Commission.
2. If in exceptional circumstances it is intended to include non-governmental experts in an investigating team, the firms and the authorities of an exporting country should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements under the Ordinance.
3. The Commission shall normally obtain explicit agreement of the firms concerned in an exporting country before a visit is finally scheduled.
4. As soon as the agreement of the firms concerned has been obtained, the Commission shall notify the concerned authorities of an exporting country of the names and addresses of the firms to be visited and the dates agreed.
5. Sufficient advance notice should be given by the Commission to the firms in question before a visit is made.
6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if: (a) the Commission notifies the concerned representatives of an exporting country; and (b) the latter does not object to the visit.
7. As the main purpose of a on the spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to a questionnaire has been received unless the firm agrees to the contrary and the government of an exporting country is informed by the Commission of an anticipated visit and does not object to it. The Commission shall normally advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, however, such requirement shall not preclude the Commission from requesting further details on the spot to be provided in the light of information obtained.
8. Enquiries or questions put by the authorities or firms of an exporting country and essential to a successful on the spot investigation shall, whenever possible, be answered by the Commission before a visit is made.

SCHEDULE-II
[See rule 19]
FEE TO BE PAID TO THE COMMISSION

For an application under section 11 of the Ordinance. Rs. 75,000/-

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