RULES AND REGULATIONS TO GOVERN CONDUCT OF INVESTIGATION BY THE TARIFF COMMISSION PURSUANT TO REPUBLIC ACT 8800 “AN ACT PROTECTING LOCAL INDUSTRIES BY PROVIDING SAFEGUARD MEASUR...

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Pursuant to RA 8800, the following rules and regulations are hereby promulgated for the guidance of all concerned:

> SECTION 1. Commencement of Investigation — Within five (5) working days from receipt of the request and records of the case from the Secretary of Trade and Industry or Secretary of Agriculture (the “Secretary”), the Tariff Commission (“the Commission”) shall publish in two newspapers of general circulation the notice of the commencement of the formal investigation, and the date, time and place of Preliminary Conference.
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> However, when the case is certified urgent by the Secretary, the Commission shall commence the formal investigation and publish in two newspapers of general circulation the notice of the formal investigation and the date, time and place of the Preliminary Conference within three (3) working days from receipt of the request and records of the case from the Secretary.
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> The Commission shall conduct formal investigation to determine the following:
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> 1. If the subject domestic product is a like or directly competitive product to the imported product under consideration;
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> 2. If the product is being imported into the Philippines in increased quantities whether absolute or relative to the domestic production;
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> 3. The presence and extent of serious injury or threat thereof to the domestic industry that produces like or directly competitive product;
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> 4. The existence of causal relationship between the increased imports of the product under consideration and the serious injury or threat thereof to the domestic industry;
>
> 5. To determine if the proposed adjustment plan shall result to the domestic industry becoming more competitive.

SECTION 2. Nature of Investigation — The investigation of the Commission is fact-finding and administrative in nature. The formal investigation shall be conducted in a summary manner. No dilatory tactics or unnecessary or unjustified delays shall be allowed and the technical rules of evidence used in regular court proceedings shall not be applied.

SECTION 3. Notice of Formal Investigation, Preliminary Conference, Public Consultation and the Submission of Preliminary Adjustment Plan — Within five (5) working days from receipt of the request and records of the case from the Secretary, the Commission shall notify in writing all parties on record on the commencement of the formal investigation, requiring them to appear at a Preliminary Conference to be set by the Commission within seven (7) calendar days on the commencement of the formal investigation, schedule of the Public Consultation,

submission of Preliminary Adjustment Plan and the Notice of Billing.

However, when the case is certified urgent by the Secretary, the Commission shall notify in writing the parties of the formal investigation and of the Preliminary Conference within three (3) working days from receipt of the request and records of the case from the Secretary.

SECTION 4. Preliminary Conference — At the Preliminary Conference, the following issues shall be discussed: schedule(s) and procedures of the Public Consultation, the nature of the administrative and fact-finding proceedings, the non-applicability of the technical rules of procedures in the Rules of Court, the non-availability of confidential information, time frame of the formal investigation, other related matters relative to the speedy disposition of the case and the submission of their respective evidence and position papers.

Following the Preliminary Conference, the Commission shall issue an order covering matters taken up.

SECTION 5. Position Paper — Within fifteen (15) calendar days from receipt of notice of the commencement of the formal investigation the parties shall submit to the Commission their respective position papers, affidavits of witnesses, all documentary evidence, and record and information in support thereof and serve copies to the other parties.

However, when the case is certified urgent by the Secretary, parties shall submit to the Commission their respective position papers, affidavits of witnesses, all documentary evidence and records/information in support thereof and serve copies to the other parties within seven (7) calendar days from receipt of notice.

SECTION 6. Verification/Ocular Inspection — Parties who filed a Petition for the application of safeguard measures shall, when required, allow the Commission access to necessary information to enable the Commission to expedite the investigation. Plant visits or inspections may be conducted by the Commission even without the presence of other interested parties.

SECTION 7. Final Adjustment Plan — The Commission, in the course of its investigation shall issue appropriate notice to representatives of the concerned domestic industry or other parties, to submit their final adjustment plan to import competition within forty-five (45) calendar days upon receipt of the notice, except when the Secretary certifies that the same is urgent, in which case the adjustment plan must be submitted within thirty (30) calendar days.

If the Commission makes an affirmative determination of injury or threat thereof, individual commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition shall be submitted to the Commission by any:

a. Firm in the domestic industry;
b. Certified or recognized union or group of workers in the domestic industry;
c. Local community;
d. Trade association representing the domestic industry;
e. Other person or group of persons.

The adjustment plan shall provide a clear quantification of its proposed goals and detail the efforts that the domestic industry and other concerned parties will make to place the domestic industry in a more competitive position. The goals shall be presented using objectively verifiable indicators that will cover the period for which safeguard measures are sought. Measures covering more than one year shall include specific efforts to be undertaken by the domestic industry for each year of progressive liberalization of the measure. It shall likewise include a time frame to enable the Commission to monitor their attainment over the specified period.

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SECTION 8. Staff Report — Within sixty (60) calendar days from the receipt of the request and the records from the Secretary, the Commission shall prepare and issue a public version of the staff report. The staff report shall cover amongst others findings on product comparability, volume of increased imports, and any other relevant data and information duly verified, documentary submissions made by the parties before the public consultation, adjustment plan, linkages/chart, article (s) under consideration and the evaluation of the results of the verification/ocular inspection conducted by the Commission.

However, when the case is certified urgent by the Secretary, the Commission shall prepare and issue a public version of the report within thirty five (35) calendar days from receipt of the request and records of the case from the Secretary.

SECTION 9. Comments on the Staff Report — Within five (5) calendar days from receipt, parties are given one opportunity to comment on the staff report particularly on the aspects of product comparability and volume of increased imports as these matters will be binding and excluded as matters for discussion in the Public Consultation.

If no comment is filed, then the factual finding on product comparability and volume of imports of the Commission contained in the Staff Report will be binding to the party who did not submit its Comment.

SECTION 10. Public Consultation — The Commission, after due notification, shall conduct marathon Public Consultation to give all interested parties affected and such other interested parties as consumers that in the judgment of the Commission are entitled to attend, an opportunity to be heard and to present evidence including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. Public Consultation once commenced shall continue daily with morning and afternoon sessions if necessary. Five (5) calendar days before the Consultation, the parties are required to submit to the Commission a list of issues they wanted explored in the Public Consultation other than the issues on product comparability and volume of increased importation, which will be excluded in the coverage of the matters for discussion in the Public Consultation.

SECTION 11. Procedure of Public Consultation — All interested parties may appear at the Public Consultation and present, under oath further evidence relevant and material to the subject matter of the investigation except those matters included in the staff report. The order of the Consultation shall be:

a. Clarificatory questions to be propounded by the Respondent.

b. Petitioner may answer the clarificatory questions of the Respondent.

c. Clarificatory questions to be propounded by the Petitioner to the Respondent; and

d. Respondent may answer the clarificatory questions of the Petitioner.

As a rule, the Presiding Officer shall propound clarificatory questions. Questions of the parties shall be referred to the Presiding Officer. However, in the interest of expediency and for the purpose of drawing out direct response to the clarificatory questions by a party, the Presiding Officer may allow the parties to propound their questions directly to the opposing parties.

The process of clarificatory questioning shall not be unlimited. Irrelevant, repetitious, misleading, speculative or personal questions shall not be allowed. The presiding officer may control the protracted questioning for the purpose of conserving the time of the Commission and of protecting the party from prolonged and needless examination. Unreasonably lengthy questioning on matters, e.g., testing the credibility of the witness, bias, relation, and the like, shall be discouraged.

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A party while answering question shall not be interrupted but may ask clarificatory questions by the Presiding Officer. After a party has given his testimony, he may be asked by the Presiding Officer and/or opposing party after being recognized by the Presiding Officer. No observer may participate in the proceedings unless recognized by the Presiding Officer and after informing the latter of his interest in the proceedings and of his willingness to answer questions. Refusal to answer questions will disqualify him/her from further participation in the proceedings.

Pending investigation and evaluation of the case, the parties are enjoined from discussing with the public the merits of the case.

At the first day of Public Consultation, all the principal parties, counsels, affiants, deponents and other interested parties are required to appear before the Commission.

SECTION 12. Methods of Obtaining Information — The Commission may, in addition to the pertinent records and/or documents forwarded by the Secretary and the information and/or submissions by the parties, request information, views, and recommendations from other sources and any government offices, such as: the Department of Finance and its Bureau of Customs, Department of Agriculture, Department of Environment and Natural Resources, the Department of Trade and Industry and its Bureau of Import Services and Bureau of International Trade Relations, the Bangko Sentral ng Pilipinas, the Department of Foreign Affairs, the Board of Investments, National Statistics Office, Securities and Exchange Commission, or any other instrumentality concerned with the subject matter of the investigation.

The Commission shall require any interested party to allow the Commission access to its records, etc., or otherwise provide necessary information to enable the Commission to acquire sufficient data and information to support its findings.

The Commission may also send correspondence to other interested parties, domestic and foreign, conduct an ocular inspection, examine and/or verify books of accounts/records and financial statements, and hold conferences and consultations with the producers, traders, representatives of labor, and consumers.

SECTION 13. Inspection of Evidence — Any interested party shall, when required, allow the Commission access to necessary information otherwise provide the necessary information to enable the Commission to expedite the investigation.

The Commission shall make available for inspection by interested parties copies of all evidence submitted. Any information which is by nature confidential or which is provided on a confidential basis, shall upon cause being shown, not be disclosed without the permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the Commission may disregard such information unless it can be demonstrated to the Commission’s satisfaction from appropriate sources that the information is correct.

SECTION 14. Disclosure of Confidential Information — Prior to or at the commencement of the Public Consultation, the Commission may, upon request, make available for examination and reproduction, to each party or the party’s counsel all relevant information in its custody that were not considered confidential. Where the Commission, however, decides not to allow access to these information on the basis of confidentiality, the opposing counsel or party shall not be given copy or examine any of these information or portion thereof except

the non-confidential summary or version provided in the preceding paragraph.

SECTION 15. Public Notices — Written notice of the assumption of formal investigation, schedule of Preliminary Conference and the Public Consultation by the Commission shall be posted on the Bulletin Board of the Commission and shall be published in two (2) newspapers of general circulation in the Philippines at the expense of the Petitioner. It shall contain the name of the Petitioner, nature of the petition, trade/commodity classification and/or description of the article involved, HS heading number and rate of duty, and the time, date and place of the consultation including a concise summary of the petition. Copies of such notice shall be furnished the Petitioner(s), Respondent(s), trade and commercial organizations, and government agencies or entities concerned as identified by the Secretary. The Commission may use personal service, fax, telegram, electronic mail and ordinary mail in serving parties of its notices, pleadings, decisions, orders and resolutions.

The Commission, after submitting its report to the Secretary under Section 21, shall make it available to the public except those confidential information and publish a summary in two (2) newspaper of general circulation.

SECTION 16. Mode of Service — Only personal or special courier service of pleadings, (i.e. position paper, memoranda, motions, manifestations, etc.) and notices between the parties and from the parties to the Commission in Metro Manila shall be allowed. HTDCAS

Parties, if they agree, may make service by fax or electronic mail (e-mail) in which case the date of the transmission shall be deemed to be the date of service. In case voluminous pleadings or documents and/or numerous parties, the Commission, upon proper motion, may waive the requirement of service, provided a copy together with its annexes is filed with the Commission and is made available for examination and reproduction and the notice of such filing and availability is duly served on the parties by the party filing it.

SECTION 17. Determination of Serious Injury or Threat thereof — The Commission in determining that the increase in importation of the product under consideration is causing serious injury or threat thereof to a domestic industry producing like products or directly competitive products, the following relevant factors shall be evaluated:

1. The rate and amount of the increase in imports of the products concerned in absolute and relative terms;

2. The share of the domestic market taken by the increased imports;

3. Changes in the level sales, production, productivity, capacity utilization, profits and losses, and employment.

The Commission shall evaluate information on injury and increased imports covering the previous five (5) year period prior to the submission of the application. If the submission was made in the second semester of the current year, the information shall cover the previous five (5) years and the period of the current year for which statistical information is available, provided, however, in some cases, the period may be adjusted to cover a shorter period in order to take into account other considerations that will ensure the appropriateness of the chosen period, e.g. seasonality of the product, availability of data.

The Commission in the determination of serious injury, shall take into account all relevant economic factors, including but not limited to the following:

1. Significant idling of productive facilities in the domestic industry including the closure of plants or under utilization of production capacity;

2. Inability of a significant number of firms to carry out domestic production at a profit; and

3. Significant unemployment or underemployment within the domestic industry.

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A determination of threat of serious injury shall be based on facts and not merely on allegations, conjectures or remote possibilities, and shall consider the following:

1. Significant rate of increase in imports into the Philippines indicating the likelihood of substantially increased importation, evidenced inter alia by the existence of letters of credit, supply or sales contract, the award of a tender, an irrevocable offer or other similar contracts;

2. Sufficient freely disposable, or an imminent, substantial increase in, production capacity of the foreign exporters including access conditions they face in third country markets, indicating the likelihood of substantially increased exports to the Philippines;

3. Decline in sales or market share, and downward trend in production, profits, wages, productivity or employment (or increasing underemployment) in the domestic industry and its inability to generate capital for modernization or maintain existing levels of expenditures for research and development; and

4. Growing inventories of the product being investigated whether maintained by Philippine producers, importers, wholesalers or retailers.

5. In making determination with respect to substantial cause, the Commission shall take into account the effects of the increased imports on the economic factors and indices relating to the serious injury or threat thereof as supplied by the domestic industry.

The extent of injury caused by the importation of the products on the domestic industry shall be determined by the Commission upon examination of all relevant evidence. Such determination shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between the increased imports of the product under consideration and serious injury or threat thereof to the domestic industry. Any known factors, other than the increased importation of the products under consideration, which at the same time injure the domestic industry, shall also be examined and the injuries caused by these factors must be attributed to the increased importation of the product under consideration.

The effects of the increased imports of the product under consideration shall be assessed in relation to the domestic production of the like product or directly competitive product by separate identification of that production based on such criteria as production processes, sales, and profits. If such is not possible, the effects of the increased imports of the product under consideration shall be assessed by the examination of the product of the narrowest group or range of products which includes the like or directly competitive product for which the necessary information is available.

SECTION 18. Adoption of Definitive Measures — Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measures, in the form of:

a. An increased in, or imposition of, any duty on the imported product;

b. A decrease in or the imposition of a tariff-rate quota (MAV) on the product;

c. A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;

d. One or more appropriate adjustment measures, including the provision of trade adjustment assistance;

e. Any combination of actions described in subparagraphs (1) to (5);

f. Initiation of international negotiations;

SECTION 19. Duration of the General Safeguard Measure — The Commission in case of positive finding shall

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recommend to the Secretary any form of safeguard measure listed in the immediately preceding section for a duration not exceeding four (4) years. Such period shall include the period, if any, in which a provisional relief was in effect. The Commission shall take note that the effective period including any extension thereof may not, in the aggregate, exceed ten (10) years.

SECTION 20. Limitation and Extent of Quantitative Restriction as a Safeguard Measure — The general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributable to the increased imports: Provided, however, that when quantitative restrictions are used, such measures shall not reduce the quantity of imports below the average imports for the three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy a serious injury.

SECTION 21. Limitation and Extent of Additional Duty as Safeguard Measure — Any additional duty imposed as a safeguard measure may be specific and/or ad valorem which shall be in the amount necessary to prevent or redress, or remedy the injury to the domestic industry. The definitive measures in the form of tariff increase shall not be subject or limited to the maximum levels of tariff as set forth in Section 401 (a) of the Tariff and Customs Code of the Philippines.

SECTION 22. Imports from a Developing Country— A general safeguard measure shall not be applied to a product originating from a developing country if its share of total imports of the product is less than three percent (3%) provided, however, That developing countries with less than three percent (3%) share collectively account for not more than nine percent (9%) of the total imports.

SECTION 23. Amended Position Paper — Within ten (10) calendar days from the termination of the Public Consultation, parties who earlier submitted their respective Position Papers may submit an amended Position Paper to the Commission.

However, when the case is certified urgent by the Secretary, parties who earlier submitted their respective Position Papers may submit an amended Position Paper within five (5) calendar days from the termination of the Public Consultation.

SECTION 24. Submission of Draft Report of Findings for Collegial Deliberation — Within twenty (20) calendar days from the last day to submit an Amended Position Paper, a copy of the Draft Report of Findings shall be submitted for Collegial Deliberation.

However, when the case is certified urgent by the Secretary, a copy of the Draft Report of Findings shall be submitted for Collegial Deliberation within five (5) calendar days from the last day to submit an Amended Position Paper.

SECTION 25. Report of the Commission — Based on its findings, the Commission shall submit to the Secretary within one hundred twenty (120) or sixty (60) calendar days as when the case is certified urgent by the Secretary, the following:

1. The Investigation Report;
2. The Proposed Recommendations;
3. A copy of the submitted adjustment plan; and
4. The commitments made by the domestic industry to facilitate positive adjustment to import competition.

The report shall also include a description of the short and long term effects of the affirmative or negative recommendations, as the case may be, on the petitioner, the domestic industries, the consumers, the workers, and the communities where production facilities of such industry are located;

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The Commission, after submitting the report to the Secretary, shall make it available to the public except those confidential information and publish a summary in two (2) newspaper of general circulation.

SECTION 26. Monitoring of the Domestic Industry — So long as the definitive measure is in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

In case one or more firms of the benefitting industry which applied for safeguard measure failed to comply with their commitments reflected in the approved adjustment plan, the safeguard measure shall continue in effect, provided however, that the firm(s) which complied with their commitment constitute the majority in accordance with the definition of the domestic industry under Section 4, paragraph (f) of RA 8800.

If the initial application of the definitive measure exceeds three (3) years, or if an extension of such application exceeds three (3) years, the Commission shall submit to the Secretary, a report on the results of the monitoring, not later than the date which is the midpoint of the initial period, and each of such extension, during which the action is in effect.

A safeguard action that has been effective for a period of more than six (6) months shall be subject to regular monitoring by the Commission for the purpose of determining whether or not the safeguard measure shall be phased-out or reduced depending on showing of positive or negative adjustment.

The Commission, in the preparation of each monitoring report, shall conduct Public Consultation at which interested parties shall be given reasonable opportunity to be present, to present evidence, and to be heard.

SECTION 27. Action of the Commission Against Refusal or Failure to Comply of a Benefiting Industry of an Approved Adjustment Plan — When the Commission during the duration of the safeguard action after investigation and Public Consultation finds that the benefiting industry has reneged on its commitment or otherwise failed to show improvements or facilitate positive adjustment to import competition within the allowable period following its committed time frame and objectively verifiable indicators, it may recommend to the Secretary the termination or phase down of the approved safeguard measure.

SECTION 28. Action of the Commission in Case of a Petition For and Extension or Re-Application of Safeguard Measure — The Commission shall submit to the Secretary not later than sixty (60) calendar days from its receipt of the request following the procedures laid down in Sections 1, 4 and 11.

SECTION 29. Evaluation of Effectiveness of Action — After termination of the application of the definitive measures, the Commission shall evaluate the effectiveness of the actions taken by the domestic industry in facilitating positive adjustment to import competition in line with the agreed commitments laid down in Section 7.

The Commission shall hold a Public Consultation on the effectiveness of the action at which all interested parties shall be afforded opportunity to present evidence or testimony.

SECTION 30. Counsel of Record — Any party who signs a document filed pursuant to these Rules and Regulations on behalf of any party shall be the Counsel of Record for the Party and shall continue in that capacity until a change, if any, is made. A party in a proceeding may change the party’s counsel of record by serving the Commission a Notice of Change of Counsel signed by the new counsel and agreed to by the previous counsel.

At the Preliminary Conference, parties of records shall notify the Presiding Officer of the name and addresses of their respective lead counsel and an alternate/collaborating counsel who will take over in the event that the lead counsel of record has indicated that he is not available to appear in a scheduled date and/or subsequent hearing/s.

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SECTION 31. Presiding Officer — Public Consultation on the merits shall be presided by the Chairman and Member Commissioner/s or by any one of them provided that, only in case of mere postponement and/or resetting of scheduled hearing, any of the Directors or any senior official of the Commission, upon instruction, may be required to preside.

SECTION 32. Venue of Public Consultation — Unless otherwise decided by the Commission to be held in another place, the public hearing shall be conducted at the Conference Room of the Tariff Commission, 5/F Philippine Heart Center Building, East Avenue, Diliman, Quezon City.

SECTION 33. Fees — Pursuant to Executive Order No. 159 and the provisions of Section 511 of the Tariff and Customs Code, as amended, the Commission shall, for purposes of implementing this investigation, collect the following fees and charges:

a. Cost of Investigation(normal track) P10,000.00

Cost of investigation (fast track) P20 ,000.00

b. Photocopy of other documents (excluding transcript stenographic notes) per page P2.00

The cost of publication, which covers the following notices, to wit: (a) Initiation of formal investigation (b) Preliminary Conference and the (c) Public Consultation shall be at the expense of Petitioner.

Non-payment of the cost of investigation and cost of publication within five (5) calendar days from notice of billing is an indication that the protestant is not serious in pursuing the formal investigation and as such may cause the suspension of the formal investigation and the running of the time for the Commission to complete its formal investigation.

SECTION 34. Transcript of the Proceedings — In all proceedings before the Commission, it shall be the duty of the Commission's stenographer to take down all notes in the proceedings; and immediately, thereafter, shall transcribe thereof and file the same with the records of the case, duly certified, initialed on each page and signed on the last page. It shall be made available to all interested parties for a fee.

SECTION 35. Effectivity — The foregoing Rules and Regulations shall take effect immediately from the date of filing of three (3) certified copies thereof with the University of the Philippines Law Center, Diliman, Quezon City.

Adopted: 22 November 2000

(SGD.) EMMANUEL T. VELASCO, PH.D.
Chairman

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