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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN
MINISTRY OF COMMERCE

NOTIFICATION

Islamabad, the 17th July, 2023.

S. R. O. 1013(I)/2023.—In exercise of the powers conferred by section 26 of the National Tariff Commission Act, 2015 (XII of 2015), the National Tariff Commission, with the prior approval of the Federal Government, is pleased to make the following rules, namely:—

1. **Short title and commencement.**—(1) These rules shall be called the National Tariff Commission (Procedure) Rules, 2023.

(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) "Act" means the National Tariff Commission Act 2015 (XII of 2015);

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- (b) "application" means an application submitted to the Commission under the Act;
- (c) "company" means a company incorporated under the Companies Act, 2017 (XIX of 2017) or a body corporate set up under a Federal or Provincial law;
- (d) "investigation" includes an inquiry, investigation or proceedings or study or research work, carried out by the Commission, for the performance of the functions under the Act;
- (e) "public body" means the Government, Federal or Provincial authorities, bodies governed under any federal or provincial law for the time being in force; and
- (f) "private entity" means any entity that is not a unit of government, including but not limited to a corporation, partnership, company, non-profit organization or other legal entity or a natural person.

(2) All other terms and expressions used but not defined in these rules shall have the same meanings assigned thereto under the Act.

3. **Secretariat of the Commission.**—(1) The secretariat of the Commission shall be at Islamabad.

4. **Submission of application.**—(1) An application under clause (a) of sub-section (1) of section 9 of the Act may be made by an industrial or trading business in the form as specified by the Commission containing information as is reasonably available to the applicant.

(2) Application referred to in sub-rule (1) shall be accompanied by a fee of thirty thousand rupees in the form of bank draft or pay order payable to the Commission.

(3) A request of an industrial or trading business forwarded by the Federal Government shall be treated as an application made by that undertaking.

5. **Initiation of inquiry.**—(1) On receipt of a properly documented application, the Commission may decide to initiate an investigation in respect of any matter within fifteen days. However, if deemed necessary, the Commission may seek additional information or evidence regarding any matter raised in the application or ancillary thereto. In that case, the time period may, if the Commission so deems fit, be extended to thirty days.

(2) In case the Commission decides not to initiate the investigation, it may reject or dismiss the application *in limine* or otherwise dispose of the application and inform the applicant.

6. **Reference from the Federal Government.**—If an investigation is initiated on the basis of a reference received from the Federal Government under clause (b) of sub-section (1) of section 9 of the Act, the provisions of rules 7, 8, 9, 10, 11, 12, and 14 shall apply, *mutatis mutandis*, to conduct the investigation.

7. **Suo moto action.**—Where the Commission decides to initiate an investigation on its own motion, as a matter of public importance under clause (c) of sub-section (1) of section 9 of the Act, the provisions of rules 7, 8, 9, 10, 11, 12, and 14 shall apply, *mutatis mutandis*, to conduct the investigation.

8. **Procedure for inquiries.**—(1) Upon receipt of an application, to the satisfaction of the Commission, the same shall initiate an investigation within fifteen days. The timelines provided for investigation in the Schedule to the Act shall start after receipt of duly completed application.

(2) Unless a decision has been made to initiate an inquiry or investigation, the Commission shall not publicize an application or any part thereof.

(3) Upon initiation of an investigation and to fulfill the requirements of sub-section (2) of Section 12 of the Act, the Commission shall inform the stakeholders in the following manner, namely:—

- (a) direct correspondence with the parties;
- (b) the trade bodies or chambers;
- (c) by a notification in official Gazette;
- (d) in at least one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having wide circulation in Pakistan; and
- (e) notification on the Commission's official website.

(4) The Commission may hold a hearing so that all stakeholders participating have an adequate opportunity to present their views.

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

(6) The Secretary to the Commission shall maintain a record of the hearings, which subject to the requirement to protect confidential information shall be promptly placed in the public file.

(7) The Commission may decide not to hold hearing taking into account the time limits of an investigation. In case the Commission decides not to hold a hearing, interested parties may be advised in writing through letter, email or fax to submit information in writing and such information shall be made available to other parties. Such information shall be deemed to have been made available to other parties upon it being placed by the Commission in the public file to be maintained for particular investigation.

9. **Disclosure in notice of initiation of an investigation or study.**—

The notice of initiation of investigation or study shall contain adequate information on the following, namely:—

- (a) a complete description of the product, including the technical characteristics and uses of such product and its current tariff classification code as contained in the First Schedule to the Customs Act, 1969 (IV of 1969);
- (b) the issue raised by the applicant including the grounds on which the request is based and the remedy sought;
- (c) the address where information and comments may be submitted;
- (d) the time period allowed to interested parties for making their views known;
- (e) the date of initiation of an investigation;
- (f) proposed schedule for an investigation;
- (g) proposed date of hearing in the investigation; and
- (h) any other information deemed necessary by the Commission.

10. **Factors to be considered in an investigation.**—(1) In addition to the factors brought before the Commission in an application or raised by any interested party during the investigation, the Commission may consider, as applicable on case to case basis, including but not limited to—

- (a) tariff structure applicable to the value chain as envisaged by the Commission;
- (b) the domestic industry's capacity, production and sales;
- (c) information on imports and exports of the product;
- (d) demand and supply, employment, investment and market share;

- (e) price comparison of domestically manufactured product and the imported product;
- (f) the financial position of the domestic industry, including profits, profitability and return on investment;
- (g) domestic industry's price, cost to make and sell and its competitiveness in domestic and in international market;
- (h) nominal and effective protection rate;
- (i) domestic resource cost;
- (j) the availability of a domestically manufactured identical or substitute product including quality of the domestic and imported product; and
- (k) effects of proposed changes on the value chain and public interest etc.

(2) The list of factors is not exhaustive. No one or several of the factors identified in this rule shall be deemed to necessarily give decisive guidance to the Commission.

11. Acquisition of the information from public bodies.—(1) To solicit, gather, obtain and verify information from the public bodies, as provided under section 10 of the Act, the Commission may—

- (a) request for relevant information to be provided in a timely manner; or
- (b) request for access to the database of any such body for continuous information in a timely manner where necessary.

(2) To protect business confidential information received or obtained by the Commission from public bodies, the requirements of confidentiality, if any, in the relevant laws of such bodies shall be followed by the Commission.

12. Acquisition of the information from private entities.—(1) To solicit, gather, obtain and verify information from private entity under section 10 or section 11 of the Act, the Commission may—

- (a) request information on a questionnaire to any private entity or person it believes may have information relevant to its functions and such questionnaires may require such information, as the Commission deems necessary;

- (b) give reasonable time to all the parties for replying to the Commission's questionnaire, provided that the Commission shall give due consideration to any request for an extension of such period and shall grant extension whenever practicable, upon good cause shown; or
- (c) if need arises, request further information from any party in the form of supplementary questionnaire or written requests for clarification or additional information and such request shall state the date by which reply is due and reasonable time shall be granted by the Commission in order to allow detailed replies.

(2) Any party may, on its own initiative, submit to the Commission, in writing any information it considers relevant to the investigation, inquiry or study:

Provided that any voluntary submission of information which is irrelevant to its functions may be disregarded.

13. Protection of confidential information.—(1) Upon receipt of any request, from any Federal or Provincial ministry, division, departments, public entity or agency for disclosure of confidential information received or obtained, directly or indirectly, by the Commission pursuant to or in connection with an investigation, inquiry or study, the Commission shall seek prior permission of the party submitting such confidential information in writing through letter, email, fax or any other mode acceptable by the Commission.

(2) In case the party submitting such business confidential information agrees for disclosure of its confidential information under sub-rule (1), the confidential information may be provided to requesting Federal or Provincial ministry, division, departments, public entity or agency under intimation to the party concerned.

(3) In case any private party submitting such confidential information does not agree to the request for disclosure of its confidential information under sub-rule (1), it shall furnish non-confidential summary of all such information:

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

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

(4) In exceptional circumstances, any private party submitting confidential information may indicate that such information is not susceptible of

summary, in which case a statement of the reasons as to why summarization is not possible shall be provided. If the Commission concludes that the non-confidential summary provided fails to satisfy the requirements of sub-Rule (3), it may determine that the request for keeping the information confidential is not warranted.

(5) In case the provisions of sub-rule (3) are invoked and confidentiality is accorded by the Commission, the requesting Federal or Provincial ministry, division, departments, private or public entity or agency may be provided with such non-confidential information or summary of the information or in case of information not susceptible of summary the position may be conveyed to the requesting Federal or Provincial ministry, division, departments, private or public entity or agency.

14. Dissemination of information.—(1) The Commission may take measures in order to provide transparent and prompt access of information to the following, namely:—

- (a) prospective applicant;
- (b) parties to the investigation; and
- (c) general public.

(2) The information to the interested parties under sub-rule (1) may be disseminated in the following manner, namely:—

- (a) in case of the prospective applicant, the Commission may provide non-confidential summaries of the information. Any such summary shall also be placed in public file maintained by the Commission consequent upon initiation of an investigation;
- (b) in case of parties to the investigation, the Commission shall place all non-confidential information in public file and the parties to the investigation shall have access to the said public file for inspection and to obtain photocopies in such manner as may be specified by the Commission in its notice published in the official Gazette subject to payment of ten Rupees per page;
- (c) for general public, the information of general nature may be made available on website of the Commission. The general public may also be entitled to the information in terms of Right of Access to the Information Act, 2017 (XXXIV of 2017).

(3) The prospective applicant, seeking information from the Commission shall submit an application to establish its *locus standi* and relevance to the satisfaction of the Commission.

(4) The application referred to in sub-rule (3) shall be made in a formal manner by providing the following details, namely

- (a) precise description of the product along with PCT code;
- (b) defined period for which data is required; and
- (c) grades or types of product which are not being produced by the applicant but fall under the same PCT for which data is required.

(5) An application under this rule shall be made to the Secretary to the Commission who shall provide such information not later than fifteen days after receipt of an application. In case the Commission decides otherwise, the applicant shall be informed accordingly.

(6) For dissemination of the information obtained from public or private bodies, the relevant rules for the purposes of confidentiality of any such information shall be followed by the Commission.

15. Public file.—(1) The Commission shall establish and maintain a public file upon initiation of an investigation. Any information gathered or obtained by the Commission relating to each investigation shall be kept in public file subject to the requirement to protect confidential information.

(2) The public file to be maintained shall be available to any interested party for review and copying at the offices of the Commission, during such time as the Commission may notify, throughout the course of investigation.

16. Recommendations by the Commission.—On any proposal regarding tariff protection, tariff anomaly, tariff rationalization, trade matter, assistance to the domestic industry or an action initiated by the Commission at its own, the Commission after an inquiry, investigation or study may make recommendations to the Federal Government as per timelines prescribed in the Schedule to the Act.

17. Periodic review of recommendations adopted by the Federal Government.—(1) The Commission shall review the effects of recommendations where the Federal Government has accepted its recommendations in whole or in part, after one year or on such times as the Commission deems fit from the date of implementation by the Government.

(2) Procedure for investigation under these rules shall apply, *mutatis mutandis*, to the periodic review conducted by the Commission.

18. Assistance to exporters and producers facing trade remedy investigations abroad.—(1) Upon receipt of information from the Pakistan mission abroad or from any other source regarding the trade remedy actions against Pakistani exporter or producer, the Commission shall promptly establish contact with the known producer or exporter of the investigated product to fill in the questionnaire, if any, and submit the same to the investigating authority within the given time frame of any such investigation.

(2) The Commission shall also advise and assist the Pakistani exporters for filling the questionnaire and making any submissions to the investigating authority.

(3) In case the Commission finds out about any application against Pakistani exporters and producers or about any potential investigation against alleged subsidized schemes or alleged dumping by a Pakistani exporter or producer, the Commission shall promptly gather information on such alleged schemes from Government bodies, banks, business concerns and from exporters and producers to prepare defence on behalf of the Government and shall make all efforts to submit the same to the investigating authority within time lines of any such investigations.

19. Requirements of representation before the Commission.—(1) Every person acting on behalf of a party shall file a general power of attorney or special power of attorney, authorizing him to act, appear or plead before the Commission. The principal may authorize the attorney not only to pursue his cases but also to compromise or settle the matters on his behalf before the Commission.

(2) The power of attorney under sub-rule (1) must be in writing and shall be duly authorized by the party.

(3) The principal may cancel the power of attorney whether general or special at any time, however, in case of death of attorney or the principal, it shall stand cancelled automatically. In case the principal cancels the power of attorney, it shall immediately convey the same to the Commission. Power of attorney shall also be cancelled if the case for which it was given is completed.

(4) If principal appoints more than one representative in a case, he shall clearly state that in the power of attorney. In case of a new power of attorney, the earlier power of attorney stands superseded unless principal clearly mentions to keep both power of attorneys.

(5) In case no power of attorney is filed for performance of any act on behalf of principal, the Commission shall not proceed further with the request of applicant filed through unauthorized representative.

(6) In the event of hearing, the power of attorney shall be submitted to the Commission two days before such hearing and no unauthorized person may be allowed to attend the hearing.

20. **Procedure for the Commission's meeting.**—(1) Procedure under section 15 of the Act for decisions and determinations of the Commission shall be as follows:—

- (a) The Chairman shall call the meeting of the Commission to finalize the determination or to take a decision on an agenda item;
- (b) at least two working days' notice shall be given to all the Members for a meeting of the Commission and such notice shall set forth an agenda for calling the meeting, provided that the Chairman may in his discretion, call a meeting at such shorter notice as deemed necessary;
- (c) if for any reason, such meeting does not take place a new notice shall be issued;
- (d) the meeting shall be attended by all members present in office. In case any member is not present in the office, remaining members who constitute quorum of the Commission shall attend the meeting. After conclusion of the meeting, its minutes shall be put up by Secretary to the Commission at the earliest and shall be approved by the Chairman or presiding Member of the Commission;
- (e) after approval of the minutes, the report may be signed by the Members immediately;
- (f) if all agenda items are not covered during the meeting, the same shall be adjourned to another date on which the remaining agenda items shall be discussed;
- (g) if any Member of the Commission does not agree with majority decision of the Commission, he may write a dissent note which shall form part of the report;
- (h) decision reached by the Commission in a meeting shall be deemed to be final, irrespective of the fact that the composition of the Commission or its constitution is changed after the meeting and before issuance of notice for Gazette notification, etc; and
- (i) notice of determination shall be required to be published in official Gazette notification that shall be processed and sent to Press

Information department (PFD) immediately upon signing of the report.

21. **Who may sign a document.**—(1) A document submitted to the Commission shall be signed and stamped by an authorized person duly notified to the Commission by the company, firm, association, chambers or trade bodies, as the case may be.

(2) The signatory of the document must give an undertaking to the effect that the information is true and correct to the best of the knowledge of the signatory.

(3) The capacity in which an individual signs a document shall be stated below the signature on behalf of a company, firm, association, chambers or trade bodies, as the case may be.

22. **Criteria for appointment of Secretary to the Commission.**—(1) The Commission shall appoint a Secretary to the Commission amongst suitable officers holding BPS-20 position in the Commission.

(2) The Secretary shall be *ex-officio* spokesperson of the Commission. He shall also represent the Commission in the courts of law.

23. **Repeal.**—The National Tariff Commission Rules, 1990 are hereby repealed.

[F. No. 3(7)-2019-AOs.]

MOAZZAM ALI HAIDER,
Section Officer (AOs-Coord).

