

Rules for Handling Import Relief Cases

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Chapter 4-3 shall be officially implemented on Jan. 1, 2011

Amended on Jan. 13, 2014

(In case of any discrepancy between the Chinese and English texts of these Rules , the Chinese text shall govern.)

Chapter 1 General Provisions

Article 1

These Rules are prescribed in accordance with the provisions of Article 18, paragraph 3 of the Foreign Trade Act (hereafter referred to as “the Act”).

Article 2

The term “import relief case” as referred to herein means a case in which application has been made for investigation into the injury caused to an industry and for import relief pursuant to Article 18, Paragraph 1 of the Act.

A case of injury to the industry as referred to in the preceding paragraph is to be established, when there is an increase in the imported quantity of the product concerned, or an increase in such imports relative to domestic production, so as to cause or threaten to cause serious injury

to the domestic industry producing like products or directly competitive products.

The term “serious injury” as referred to in the preceding paragraph means an obvious and comprehensive injury to the domestic industry; the term “threat of serious injury” means a serious injury not yet occurred but clearly imminent.

Article 3

In making a determination regarding the existence of serious injury, the amount and rate of increase in imports of the product concerned in absolute terms and relative to domestic production shall be considered altogether, and consideration shall also be given to the following factors in respect of the domestic industry concerned and changes thereof:

1. market share,
2. sales,
3. production,
4. productivity,
5. capacity utilization,
6. profits and losses,
7. employment,
8. other relevant factors.

In making a determination regarding the existence of a threat of serious injury, in addition to the factors and their trend of changes as mentioned in the preceding paragraph, the production capacity and export capability of the major exporting countries shall be considered so as to evaluate whether the said industry is to be seriously injured if the relief measure is not adopted.

The Ministry of Economic Affairs, in determining the injury in accordance with the preceding two paragraphs, shall consider all evidence or information acquired in the investigation. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Article 4

For those import relief cases in which the existence of injury or threat thereof has been established pursuant to these Rules, the Ministry of Economic Affairs may adopt the following relief measures:

- 1.adjusting the tariffs,
- 2.imposing import quotas,
- 3.providing financing guarantee, subsidy for technological research and development, assistance for changing the line of business, professional training or other adjustment measures or assistance.

The measures as referred to in the sub-paragraphs 1 and 2 of Paragraph 1 shall not be adopted simultaneously.

The measure as referred to in sub-paragraph 1 of Paragraph 1 shall be implemented pursuant to the provisions of the Customs Law upon the Ministry of Finance being notified by the Ministry of Economic Affairs. The measure as referred to in sub-paragraph 2 may be implemented based on the agreement made between the Ministry of Economic Affairs and the exporting countries regarding relevant matters. The measure as referred to in sub-paragraph 3, when related to agricultural products, shall be implemented by the Council of Agriculture of the Executive Yuan. Other relief measures shall be implemented by the Ministry of Economic Affairs in conjunction with the government agencies concerned.

Article 5

The term “domestic industry” as referred to in these Rules means the domestic producers of like products or directly competitive products whose collective output of the products constitutes, as determined by the International Trade Commission of the Ministry of Economic Affairs (hereafter referred to as the “Commission”), a major proportion of the total domestic production of those products.

The term “like products” as referred to herein means products having the same characteristics and are composed of the same materials; the term “directly competitive products” means products which, despite the differences in their characteristics or composing materials, are directly substitutable products in terms of their utility purpose and commercial competitiveness.

Article 5bis

The term "interested parties" as referred to herein means:

- 1.foreign producers, foreign exporters, domestic importers or the commercial/industrial associations to which they belong as major members;
- 2.the government or its representative(s) of the exporting countries or the countries of origin;
- 3.the domestic producers of like products or directly competitive products or the commercial/industrial associations to which they belong as major members;
- 4.other interested parties as identified by the Commission.

Article 6

With respect to an import relief case, the Ministry of Economic Affairs may, upon the petition by the relevant authority, the injured domestic industry, the association representing the injured domestic industry, labor union or the relevant entities, refer the case to the Commission to proceed with the injury investigation.

Article 7

Unless otherwise provided by these Rules, a decision of the Commission shall be taken by a majority of the attending Commissioners at a meeting attended by a majority of the Commissioners.

Article 7bis

Any legal matters stipulated in these Rules with the indication of public notice shall be published in the Government Gazette.

Chapter 2 Petition

Article 8

In the case of petition for import relief, the petitioner shall submit a written petition to the Ministry of Economic Affairs, setting forth the following particulars and enclosing the following relevant information:

1. proof that the petitioner meets the qualifications prescribed in Article 6;
2. a description of the imported goods:
 - (1) the name and import and export commodity classification code of the goods, tariff code, quality, specifications, usage and other characteristics;
 - (2) the country of export, country of origin, producer, exporter, and importer;
3. the facts about the industry being affected:
 - (1) the production, sales, inventory, product, price, profits and losses, capacity utilization, and employment of the domestic industry, and their changes for the most recent three years prior to the petition date;
 - (2) the quantity, price and market share of imports in the domestic market for the most recent three years prior to the petition date;
 - (3) the quantity and price of the goods imported from the major exporting countries for the most recent three years prior to the petition date;
 - (4) other information which may be used to allege the fact that the industry has been affected;
4. the adjustment plan and the proposed relief measures allowing the industry to recover its competitiveness or to shift to another line of business.

The particulars and information which shall be set forth or required under sub-paragraphs 2 and 3 of the preceding paragraph may be

exempted, if the petitioner has justification for not being able to provide the same and the Commission has so agreed.

The adjustment plan as referred to in sub-paragraph 4 of Paragraph 1 may be submitted within 90 days of the filing of the petition.

Article 9

Unless in any of the following situations which would cause the dismissal of the petition, the Ministry of Economic Affairs, shall, within 30 days from the day after receiving the petition, refer the import relief case to the Commission for review and decision on whether to initiate an investigation; provided, however, that the time required for the petitioner to supplement information shall not be included in the thirty-day period:

- 1.the petitioner is not qualified as required in Article 6; or
- 2.the petitioner fails to meet the requirements stipulated in Article 8, Paragraph 1, and fails to supplement data within the period as notified or fails completely to supplement the information.

Regardless of whether a decision is made to initiate an investigation or not, the Ministry of Economic Affairs shall immediately notify the petitioner and known interested parties in writing and give a public notice thereof.

Chapter 3 Investigation Into Injury Caused To The Industry

Article 10

Where the Commission investigates into an import relief case, the Chairperson of the Commission shall designate one or two Commissioners to be responsible for handling the case and, where necessary, request the relevant agency to assign staff or commission scholars and experts in the relevant fields on a case-by-case basis to assist in the investigation.

Article 11

The Commission, when conducting investigation into an import relief case, shall comply with the following:

1.it shall review the information provided by the petitioner and the interested parties, and may assign staff to conduct on-site verification, and when necessary, may require the provision of additional relevant information; and

2.it shall hold hearings.

The petitioner or interested parties shall provide information according to the requirements of the Commission; if such information is not provided, the Commission may proceed to examine the case based on the information available.

Article 12

The Commission shall permit public access to the information provided by the petitioner or interested parties, except where a request with justification has been made for keeping the information confidential.

With respect to the request for confidentiality referred to in the preceding paragraph, the Commission may require provision of a summary which can be made public; if the request for provision of a summary is refused without justification, the Commission may disregard the said information.

Article 13

The Commission shall give public notice in advance of the date set forth for each hearing.

The Commission shall at the same time notify the petitioner and the known interested parties to attend the hearing.

Article 14

Application to attend a hearing may be submitted to the Commission in advance of the date set forth for a specific hearing. The applicant may present its substantive opinions relating to the case in writing to the Commission prior to a specific hearing.

Article 15

The Commission may, prior to the formal holding of a specific hearing, convene a meeting relating to procedural matters to decide on the

order of presentations, the time allocated to each presentation, and other relevant matters.

Each hearing shall be presided over by the one or more Commissioners designated by the Chairperson of the Commission pursuant to Article 10.

Article 16 (deleted)

Article 16*bis*

If the Commission, in its preliminary investigation of a case, determines that there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry producing like products or directly competitive products, and that the situation is critical, such that delay would cause damage that would be difficult to repair, the Commission may make a proposal for a provisional increase of the tariffs before its final determination on the existence of the injury. The said proposal shall be made within 70 days from the next day following the notification by the Ministry of Economic Affairs to the petitioner on the initiation of the investigation.

The Commission shall submit, within ten days, to the Ministry of Economic Affairs the proposal referred to in the preceding paragraph for the provisional increase of tariffs. Upon the Ministry's adoption of the said proposal, the Ministry shall consult with the relevant competent authorities within ten days and then submit the proposal to Executive Yuan for approval. The implementation period shall not exceed 200 days and shall be counted in the implementation period as prescribed in Article 23.

The provisional measures referred to in the preceding paragraph shall terminate when the Ministry of Economic Affairs gives a public notice stating either that the import relief measures are applied or that the injury does not exist.

The tariffs imposed under the provisional measures may be substituted and guaranteed by government bonds or other securities approved by the Ministry of Finance of equivalent amount. When the Ministry of Economic Affairs gives a public notice that the market disruption does not exist, the tariffs collected under the provisional

measures shall be refunded and/or the guarantees be waived. When the Ministry gives a public notice on the application of import relief measures, the tariffs imposed under the provisional measures shall be fully paid in cash and the guarantees be waived thereupon

Article 17

Having completed the investigation with respect to an import relief case, the Commission shall convene a Commissioners Meeting to decide whether the domestic industry has been injured.

The decision referred to in the preceding paragraph shall be made by at least two-thirds of the attending Commissioners at a meeting attended by at least half of the Commissioners.

Article 18

Unless otherwise provided in Article 19, Paragraph 1, the Commission shall make a decision as to whether the industry has been injured within 120 days from the day after the petitioner is notified of the initiation of the investigation by the Ministry of Economic Affairs.

The time limit referred to in the preceding paragraph may be extended by 60 days, if necessary, and the Commission shall notify the petitioner of such extension of time and give public notice thereof.

Article 19

With respect to an import relief case for perishable agricultural products where the serious injury would be difficult to cure if relief measures are not adopted in time, the Ministry of Economic Affairs shall, within 20 days from the day following the receipt of the petition, refer the case to the Commission for review as to whether or not to initiate an investigation, and shall also apply Article 9 *mutatis mutandis* with respect to the procedures regarding supplementation, dismissal, notification and giving public notice.

When an investigation is to be initiated, the Commission shall make a decision as to whether the industry has been injured or not within 70 days from the day after the petitioner is notified of the initiation of the investigation by the Ministry of Economic Affairs.

The perishable agricultural products referred to in the preceding paragraph shall be determined by the competent central agricultural authority on a case-by-case basis.

Article 20

In respect of a decision on whether the industry has been injured, the Commission shall, within 15 days after the decision is made, prepare a letter of decision and submit it to the Ministry of Economic Affairs together with an investigation report. The Ministry of Economic Affairs shall notify the petitioner of the decision in writing and give a public notice thereof.

In case of an affirmative decision that the industry has been injured, the Commission shall, within 30 days from the date the decision is made, hold a hearing on the import relief measures it intends to adopt, and thereafter submit to the Ministry of Economic Affairs a recommendation as to whether import relief measures shall be adopted.

Whenever the Commission submits a recommendation that relief measures shall not be adopted and the Ministry of Economic Affairs finds its recommendation acceptable, the Ministry of Economic Affairs shall promptly give a public notice that no relief measure will be implemented; if the Ministry of Economic Affairs does not find its recommendation acceptable, the Ministry of Economic Affairs shall promptly order the Commission to hold a hearing within 30 days on the import relief measures to be adopted, and thereafter submit its recommendation to the Ministry of Economic Affairs.

The provisions of Articles 13 through 16 shall apply *mutatis mutandis* to the procedure for holding the hearing referred to in the preceding paragraph.

Article 21

The Commission's recommendation to the Ministry of Economic Affairs for adopting or not adopting relief measures shall be made by at least two-thirds of the attending Commissioners at a meeting attended by at least half of the Commissioners.

Chapter 4 Import Relief

Article 22

After the Ministry of Economic Affairs has agreed to the Commission's recommendation to adopt import relief measures, it shall, except for the adoption of the relief measures as provided in Article 4, sub-paragraph 1 of Paragraph 1, which shall be dealt with in accordance with the relevant provisions of the Customs Law, decide within 60 days on the relief measures which shall be adopted ex officio or in consultation with the government agencies concerned; thereafter, it shall give public notice of and implement such relief measures and report to the Executive Yuan for recordal.

The Ministry of Economic Affairs may, if necessary, notify and consult with the interested countries before making the decision referred to in the preceding paragraph.

Article 23

The implementation of import relief measures shall take into account the effect each import relief case will have on national economic interests, the rights and interests of the consumers and the relevant industries, and shall be limited to the scope of curing or preventing the injury caused to the industry by the import. The period of implementation shall not exceed 4 years.

Article 24

If the cause for implementing import relief measures ceases to exist or if there is a change in circumstances after the implementation of the measures, the petitioner or interested parties may file a request, to the Ministry of Economic Affairs for termination or modification of the relief measures with concrete reasons and accompanied by evidence.

The request referred to in the preceding paragraph shall be submitted at the latest within 90 days prior to the expiration of the period of implementation of the measures.

With respect to the request referred to in Paragraph 1, the Commission shall conduct an investigation according to the procedure provided in Chapter III and, upon the making of a decision on whether to recommend termination or modification of relief measures, submit the recommendation to the Ministry of Economic Affairs. If the Ministry

finds the Commission's recommendation to be acceptable, it shall promptly give a public notice of termination or modification of the measures.

Article 25

If the petitioner considers that there is a need to extend the period of implementation of the import relief measures, it may petition to the Ministry of Economic Affairs within 120 days prior to the expiration of the period of implementation of the measures at the latest, for extending the relief measures with concrete reasons for the need to extend the period of implementation and a description of the said industry's adjustment performance and plan, and accompanied by evidence.

The Ministry of Economic Affairs shall, within 90 days from the date following the day on which it receives the petition for extension, make a decision as to whether the relief shall be extended, and give a public notice on the measures implemented and the period of extension. The provisions of Chapter II through IV shall apply *mutatis mutandis* with respect to the procedure for handling the same.

The extent of relief of the extended measures referred to in Paragraph 1 shall not exceed that of the original measures. The period of extension shall not exceed four years, and the extension shall be limited to one time.

Article 26

The Commission shall prepare an annual review report on the results and effects of the implementation of the relief measures adopted. If it believes that the cause for implementing the said measures have extinguished or that there is a change in circumstances, it shall recommend the Ministry of Economic Affairs to terminate or modify the measures. If the Ministry of Economic Affairs finds its recommendation acceptable, the Ministry of Economic Affairs shall promptly give a public notice of termination or modification of the measures.

Prior to the preparation of the annual review report, the Commission shall hold a hearing. The provisions of Articles 13 through 16 shall apply *mutatis mutandis* with respect to the procedure for holding the relevant hearing.

Chapter 4-1 (deleted)

Import Relief against Products from Mainland China

Article 26bis(deleted)

Article 26ter(deleted)

Article 26quater(deleted)

Article 26quinguiens(deleted)

Article 26sexies(deleted)

Article 26septies(deleted)

Chapter 4-2 (deleted)

**Import Relief against Textiles and Clothing from
Mainland China**

Article 26*octies* (deleted)

Article 26*novies* (deleted)

Article 26*decies* (deleted)

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Chapter 4-3 Import Relief against Products

Under the Early Harvest from Mainland China

Article 26septies decies

The petitions filed pursuant to Paragraph 1 of Article 18 of the Act, for the investigation on injuries to an industry and the application of import relief measures, may be specific on the products under the Early Harvest from Mainland China.

A case of injury to the industry as referred to in the preceding paragraph is to be established, when there is an increase in the imported quantity of the product under the Early Harvest from Mainland China, or an increase in such imports relative to domestic production, so as to cause or threaten to cause serious injury to the domestic industry producing like products or directly competitive products.

Article 26octies decies

For those import relief cases in which the existence of injury or threat thereof has been established pursuant to Paragraph 2 of the preceding article, the Ministry of Economic Affairs may adopt the tariff adjusting measures.

The measure as referred to in the preceding paragraph shall be implemented pursuant to the provisions of the Customs Law upon the Ministry of Finance being notified by the Ministry of Economic Affairs.

Article 26novies decies

The implementation of the measure as referred to in the preceding Article shall take into account the effect each import relief case will have on national economic interests, the rights and interests of the consumers and the relevant industries, and shall be limited to the scope of curing or preventing the injury caused to the industry by the import. The period of implementation shall not exceed 1 year.

Article 26vicies

Except for Subparagraph 2 of Paragraph 1 of Article 4, Subparagraph 4 of Paragraph 1 and Paragraph 3 of Article 8, Paragraph 2 of Article 18 and Article 23 to Article 26, articles in these Rules shall be applied *mutatis mutandis* to this Chapter.

Chapter 5 Supplement Provisions

Article 27 (deleted)

Article 28

If the Ministry of Economic Affairs shall, during the proceeding of investigation into the injury caused to the industry, find that subsidization or dumping as provided under Article 67 or Article 68 of the Customs Law is involved, it shall promptly notify the Ministry of Finance and the petitioner.

Article 28*bis*

The matters regarding the investigation, determination, consultation, the relief measures, etc. which are not provided for in the Act or these Rules shall be handled in accordance with the applicable international agreements and customs.

Article 29

These Rules shall be implemented from the date of promulgation.

The effective date of Chapter 4-3 of these Rules shall be determined by the Ministry of Economic Affairs in consultation with the authorities concerned.