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November 16, 2022

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CUSTOMS MEMORANDUM CIRCULAR

NO. 172-2022

TO: The Assistant Commissioner
All Deputy Commissioners
All Service Directors
All District/Port Collectors
All Others Concerned

SUBJECT: **DEPARTMENT OF TRADE AND INDUSTRY (DTI) DEPARTMENT ADMINISTRATIVE ORDER (DAO) NO. 22-13 S. OF 2022 ON THE IMPOSITION OF DEFINITIVE GENERAL SAFEGUARD MEASURES ON IMPORTED HIGH-DENSITY POLYETHYLENE (HDPE) PELLETS AND GRANULES FROM VARIOUS COUNTRIES (AHTN 2017 CODE 3901.20.00)**

For reference is the letter of Benjamin Diokno, Secretary of Finance, relative to the letter dated September 30, 2022, from Alfredo E. Pascual, Secretary, Department of Trade and Industry (DTI) furnishing a copy of the DTI DAO No. 22-13 s. of 2022 on the imposition of definitive general safeguard measures in the importation of High-Density Polyethylene (HDPE) pellets and granules under AHTN 2017 (Code 3901.20.00) from various countries, pursuant to the findings and recommendation of the Tariff Commission (TC) through its formal investigation.

The Order provides for the following:

- (a.) Imposition of definitive general safeguard duty in the amount of ₱1,338.00/MT for the first year, ₱1,271.00/MT for the second year and ₱1,208.00/MT for the third year of the implementation period, subject to regular review by the DTI.
- b.) Imports originating from developing countries listed in Annex "A" covered by Rule 8.8 of the IRR of RA 8800 shall not be subject to the definitive general safeguard measure. The composition of the developing countries on the de minimis list may change based on a review of the most recent data available as part of the annual review which will be conducted by the DTI during the implementation period.
- c.) The following products shall be excluded from the imposition of the general safeguard duty: (i) PE wax (AHTN 2017 subheading 3404.90.90); (ii) ethylene acrylic acid copolymer (AHTN 2017 subheading 3906.90.99); (iii) PP (AHTN 2017 subheadings 3902.10.30, 3902.10.40, and 3902.10.90); (iv) LDPE (AHTN 2017 subheadings 3901.10.19 and 3901.10.99); and (v) PET resin (AHTN 2017 subheading 3907.61.00). The different tariff classification indicates that these

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goods do not undergo either of the three established processes of polymerization, they have different product composition and physical properties and they are intended for different processing techniques and end-use/applications compared to HDPE pellets and granules classified under AHTN 2017 subheading 3901.20.00.

Imported HDPE grades specially made for use in the manufacture of wire and cable jackets/coatings, shall likewise, be excluded from the imposition of the general safeguard duty. The domestic polyethylene industry currently does not produce HDPE grades that can be used by the wire and cable industry. Also, HDPE used in rotational molding process application that are generally in powder form with a particle size of 500 microns or below. A melt index of 4.0g/10 min, and a density of 0.93-0.94g/cm³, shall be excluded from the imposition of the general safeguard duty. Currently, the domestic polyethylene industry does not produce HDPE grades with such specifications.

- d.) Importers of HDPE originating from a country that is exempt from safeguard duty and those not covered by preferential tariffs shall submit a Certificate of Country of Origin (CO) issued by the authorized agency/office in the source country of manufacture subject to affixation of "Apostille" to the document or authenticated by the Philippines Embassy/Consulate General, as applicable.

The application of the definitive general safeguard measure shall be monitored and reviewed in accordance with Section 15 and 16 of RA 8800. The domestic HDPE industry is also directed to comply with its adjustment plan.

For guidance.

For records purposes, please confirm the dissemination of this Circular throughout your offices within fifteen (15) days from receipt thereof.


DEC 02 2022
YOGI FILEMON L. RUIZ
Acting Commissioner





Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

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Acting Commissioner Yogi Filemon L. Ruiz
Bureau of Customs
South Harbor, Port Area
Manila

SUBJECT: Implementation of the General Safeguard Measures on Imported High-Density Polyethylene (HDPE) Pellets and Granules from various countries (AHTN 2017 CODE 3901.20.00)

Dear **Acting Commissioner Ruiz:**

We write concerning the letter dated 30 September 2022 of Secretary Alfredo E. Pascual of the Department of Trade and Industry (DTI) requesting the issuance of a Customs Memorandum Order (CMO) to collect the appropriate amount of the general safeguard duty on imported HDPE covered by DTI's Administrative Order No. 22-13 series of 2022.

As a brief background, The Tariff Commission (Commission) conducted a formal investigation on the imposition of safeguard measure against importations of HDPE. The period covered by the investigation (POI) are the years 2015 to 2019, with updated data up to September 2020.

The above-mentioned Order has been issued by DTI after taking into consideration the findings and recommendation of the Tariff Commission. According to the DTI, it has also provided the Philippine Plastics Industry Association, Inc. (PPIA) and JG Summit Olefins Corporation, the country's sole producer of HDPE pellets and granules, the opportunity to present and discuss additional information relevant to the case.

The Order provides for the imposition of the definitive general safeguard measure in the amount of P1,338.00/MT for the first year, P1,271.00/MT for the second year and P1,208.00/MT for the third year of the implementation period. The amount of the measure shall be subject to regular review to give DTI the opportunity to modify the amount of the duty, if necessary.

Rule 13.3(a) of RA 8800 "The Safeguard Measures Act" provides that the Secretary (DTI) shall, within two (2) calendar days from making the decision, furnish the Secretary of Finance with the copy of the Order requesting the latter to direct the Commissioner of Customs to collect the definitive safeguard duty or, in the case, the definitive safeguard. The Secretary of Finance shall, within three (3) calendar days from receipt of the copy of the Order of the Secretary (DTI), direct the Commissioner of Customs to impose the definitive safeguard duty or require the importer to present the relevant import clearance or authority for the product concerned.

Further, Rule 13.3.b of the same Act provides that it shall be mandatory for the Commissioner of Customs to issue within three (3) calendar days from receipt of the Order of the Secretary of Finance, an instruction to the Collector of Customs to proceed with the final appraisement of the product under consideration. It shall also be mandatory for the Collector of Customs to immediately implement the instructions of the Customs Commissioner upon receipt thereof.

In view thereof, the Commissioner is hereby directed to issue the relevant CMO to collect the appropriate amount of the general safeguard duty on imported HDPE covered by the attached DTI Order.

Thank you.

Very truly yours,

C. E. S.
BENJAMIN E. DIOKNO
Secretary of Finance

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30 September 2022

SECRETARY BENJAMIN E. DIOKNO

Department of Finance
DOF Building, BSP Complex
Roxas Blvd., Manila

Dear **Secretary Diokno**:

This is to respectfully furnish you a copy of the Department of Trade and Industry's Order relevant to the implementation of the general safeguard measures on imported High-Density Polyethylene (HDPE) Pellets and Granules (AHTN 2017 Subheading No. 3901.20.00) from various countries.

After providing the Philippine Plastics Industry Association, Inc. (PPIA), and JG Summit Olefins Corporation the opportunity to present and discuss additional information relevant to the case, and taking into consideration the findings and recommendations of the Tariff Commission, the subject Order has been issued.

The Order provides for the imposition of the definitive general safeguard measure in the amount of ₱1,338.00/MT for the first year, ₱1,271.00/MT for the second year and ₱1,208.00/MT for the third year of the implementation period. The amount of the measure shall be subject to regular review to give DTI the opportunity to modify the amount of the duty, if necessary.

Pursuant to Rule 13.3(a) of RA 8800 "The Safeguard Measures Act", *"the Secretary shall, within two (2) calendar days from making the decision, furnish the Secretary of Finance with the copy of the Order requesting the latter to direct the Commissioner of Customs to collect the definitive safeguard duty or, in the case the definitive safeguard x x x. The Secretary of Finance shall, within three (3) calendar days from receipt of the copy of the Order of the Secretary, direct the Commissioner of Customs to impose the definitive safeguard duty or require the importer to present the relevant import clearance or authority for the product concerned.*

Rule 13.3.b. It shall be mandatory for the Commissioner of Customs to issue within three (3) calendar days from receipt of the Order of the Secretary of Finance, an instruction to the Collector of Customs to proceed with the final appraisement of the product under consideration. It shall also be mandatory for the Collector of Customs to immediately implement the instructions of the Customs Commissioner upon receipt thereof. x x x.

In view thereof, the DTI has issued the relevant Order on the matter which shall be effective from the date of the issuance by the Bureau of Customs of the Customs Memorandum Order (CMO).

OFFICE OF THE SECRETARY

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May we therefore request your office to direct the Commissioner of the Bureau of Customs to issue the relevant CMO to collect the appropriate amount of the general safeguard duty on imported HDPE covered by the said DTI Order.

Thank you for your collaboration.

Yours sincerely,


ALFREDO E. PASCUAL
Secretary

cc: Acting Commissioner Yogi Filemon L. Ruiz
Bureau of Customs



Department Administrative Order No. 22-13
Series of 2022

**IN THE MATTER OF THE DEFINITIVE GENERAL
SAFEGUARD MEASURE ON THE
IMPORTATIONS OF HIGH-DENSITY
POLYETHYLENE PELLETS AND GRANULES
(AHTN 2017 CODE 3901.20.00)
(Safeguard Measures Case No. SG05-2020)**

x-----x

ORDER

On 28 June 2022, the Department of Trade and Industry (DTI) received the Tariff Commission's (Commission) Final Report on the Formal Investigation on the imposition of safeguard measure against importations of High-Density Polyethylene Pellets and Granules (AHTN 2017 Code 3901.20.00).

The period covered by the investigation (POI) are the years 2015 to 2019, with updated data up to September 2020. For purposes of the Commission's formal investigation, and in accordance with WTO-requirements, the POI is from 2015 to June 2021.

The Commission, in accordance with the Safeguard Measures Act (RA 8800), concluded the following:

1. JG Summit Olefins Corporation is the country's sole producer of High-Density Polyethylene (HDPE) pellets and granules. As the sole manufacturer of HDPE products, its output complies with the domestic industry requirement under Section 4(f) of RA No. 8800.
2. Locally produced HDPE pellets and granules are intended for (i) film extrusion process, (ii) injection molding process, (iii) blow molding process, (iv) pipe extrusion process and (v) monofilament extrusion process, and their respective applications, and are like products to imported HDPE pellets and granules classified under AHTN 2017 subheading 3901.20.00 which are intended for the same processes and applications.
3. HDPE pellets and granules were imported into the Philippines in increased quantities both in absolute terms and relative to domestic production starting in the first semester of 2021. The increase in volume of imports was recent, sudden, sharp, and significant enough.
4. While the domestic HDPE industry suffered injury, as evidenced by deterioration in industry market share, sales, and profitability during the period of import surge, the overall impairment in its position was not of a degree that may constitute serious injury.

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5. There exists an imminent threat of serious injury and significant overall impairment to the position of the domestic HDPE industry in the near future, as shown by (a) significant rate of increase in HDPE importations in 2021, pointing to the high likelihood that substantially increased imports will continue into the near future; (b) the substantial freely disposable production capacities of top suppliers Malaysia, Thailand, Singapore, and Indonesia in the form of trade diversion from their primary export markets and the importance of the Philippines as an alternative market, indicating a high likelihood of substantially increased exports of HDPE to the Philippines in the near future; and (c) the significant deterioration in the overall position of the domestic HDPE industry during the period of import surge (i.e., declines in market share, sales, production, capacity utilization, and profits).
6. There is a direct causal relationship between increased imports of HDPE and the imminent threat of serious injury and significant overall impairment to the position of the domestic HDPE industry in the near future. While there were other factors that contributed to the impairment of the domestic HDPE industry, these were not substantial to cause serious injury to the local HDPE industry during the period of import surge.
7. Serious injury to the domestic HDPE industry would occur imminently if a definitive safeguard measure against importations of HDPE is not applied.
8. The circumstances provided in Article XIX of GATT 1994 does not need to be demonstrated since the product under consideration is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by national legislation (RA 8800) and the terms and conditions of the Agreement on Safeguards.

The Commission recommended the application of the appropriate definitive general safeguard measure on importations of HDPE to prevent the imminent occurrence of serious injury to the Philippine HDPE industry. The Commission further recommended that the definitive safeguard measure be applied for a period of three (3) years from the issuance of the relevant Customs Memorandum Order by the Bureau of Customs.

Accordingly, while DTI is mandated to protect consumers, there is a need to balance this with the other sectors such as the investors and industries which provide employment to Filipinos. There is also a need to moderate imports to balance trade. For local manufacturers to adequately supply domestic requirements, they need to be provided a level playing field to enable them to compete with imports. This will allow the expansion of the industry's manufacturing base and sales which will generate more jobs for Filipinos and allow the continuity of employment for the existing employees of the industry. Thus, the imposition of safeguard duty is not prejudicial to public interest.

Further, users of HDPE pellets and granules will retain their option to choose between the local and imported HDPE pellets and granules since imports will still be allowed. The imposition of the safeguard measure will only be temporary and is not expected to cause shortage of HDPE pellets and granules in the domestic market considering that the HDPE manufacturer has sufficient capacity to meet domestic demand.

WHEREFORE, IN VIEW THEREOF, and pursuant to Section 13 of RA 8800, the DTI hereby, issues the following:

1. A definitive safeguard duty effective for three (3) years, shall be imposed on imported HDPE pellets and granules from various countries to implement the adjustment plan of the local HDPE industry within that period. Pursuant to Section 15.3 of RA 8800 provides: "An action described in Section 13 (a), x x x that has an effective period of more than one (1) year shall be phased down at regular intervals within the period in which the action is in effect". Thus, the amount of the safeguard duty to be imposed for the First Year shall be Php1,338/MT, for the Second Year – Php1,271/MT, and for the Third Year - Php1,208/MT. The duty shall be applied to HDPE classified under AHTN 2017 Code 3901.20.00.
2. Imports originating from developing countries listed in Annex "A" covered by Rule 8.8 of the IRR of RA 8800 shall not be subject to the definitive general safeguard measure. The composition of the developing countries on the *de minimis* list may change based on a review of the most recent data available as part of the annual review which will be conducted by the DTI during the implementation period.
3. The following products shall be excluded from the imposition of the general safeguard duty: (i) PE wax (AHTN 2017 subheading 3404.90.90); (ii) ethylene acrylic acid copolymer (AHTN 2017 subheading 3906.90.99); (iii) PP (AHTN 2017 subheadings 3902.10.30, 3902.10.40, and 3902.10.90); (iv) LDPE (AHTN 2017 subheadings 3901.10.19 and 3901.10.99); and (v) PET resin (AHTN 2017 subheading 3907.61.00). The different tariff classification indicates that these goods do not undergo either of the three established processes of polymerization, they have different product composition and physical properties and they are intended for different processing techniques and end-use/applications compared to HDPE pellets and granules classified under AHTN 2017 subheading 3901.20.00.

Imported HDPE grades specially made for use in the manufacture of wire and cable jackets/coatings, shall likewise, be excluded from the imposition of the general safeguard duty. The domestic polyethylene industry currently does not produce HDPE grades that can be used by the wire and cable industry. Also, HDPE used in rotational molding process application that are generally in powder form with a particle size of 500 microns or below, a melt index of 4.0 g/10 min, and a density of 0.93 – 0.94 g/cm³, shall be excluded from the imposition of the general safeguard duty. Currently, the domestic polyethylene industry does not produce HDPE grades with such specifications.

4. Importers of HDPE originating from a country that is exempt from the safeguard duty and those not covered by preferential tariffs shall submit a Certificate of Country of Origin (CO) issued by the authorized agency/office in the source country of manufacture subject to affixation of "Apostille" to the document or authenticated by the Philippine Embassy/Consulate General, as applicable.

The application of the definitive general safeguard measure shall be monitored and reviewed in accordance with Sections 15 and 16 of RA 8800. The domestic HDPE industry is also directed to comply with its adjustment plan.

The DTI Order of the definitive general safeguard measures can be accessed at the DTI website: <https://bit.ly/Adv-0629>.

The notification and consultation requirements under Article 12 of the WTO Safeguards Agreement and Section 17 of RA 8800 and its IRR shall be complied with. Imports originating from member states of Free Trade Agreements that the Philippines entered into, such as ASEAN Trade in Goods Agreement (ATIGA), ASEAN-China FTA (ACFTA), Philippines-Japan Economic Partnership Agreement (PJEPA), ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEPA), ASEAN-Korea FTA (AKFTA), ASEAN-India FTA (AIFTA), ASEAN-Australia-New Zealand FTA (AANZFTA), Philippines-European Free Trade Association FTA (PH-EFTA FTA), and ASEAN-Hong Kong FTA (AHKFTA) shall follow the notification and/or consultation requirements provided under the said FTAs.

Let this Order be published in two (2) newspapers of general circulation and let individual notices be sent to all interested parties including the country members concerned.

This Order shall take effect upon the issuance of the relevant Customs Memorandum Order by the Bureau of Customs.

SO ORDERED.

30 September 2022


ALFREDO E. PASCUAL
Secretary

ANNEX A

List of Developing Countries and Separate Customs Territories Excluded from the Imposition of Definitive General Safeguard Measure on High-Density Polyethylene (HDPE) Pellets and Granules

East & Southern Africa	West Africa	North Africa	South Asia
Angola Botswana Burundi Comoros Congo, Dem. Rep. Djibouti Eritrea Eswatini Ethiopia Kenya Lesotho Madagascar Malawi Mauritius Mozambique Namibia Reunion Rwanda Seychelles Somalia South Africa Sudan Tanzania Uganda Zambia Zimbabwe	Benin Burkina Faso Cameroon Cape Verde Central African Rep. Chad Congo, Rep. Cote d' Ivoire Equatorial Guinea Gabon Gambia, The Ghana Guinea Guinea, Bissau Liberia Mali Mauritania Niger Nigeria Sao Tome & Principe Senegal Sierra Leone Togo	Algeria Egypt, Arab Rep. Libya Morocco Tunisia	Afghanistan Bangladesh Bhutan British Indian Ocean Territory East Timor India Maldives Nepal Pakistan Sri Lanka

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Europe & Central Asia	Middle East	Americas	East Asia & Pacific
Albania	Bahrain	Anguilla	American Samoa
Armenia	Iran, Islamic Rep.	Antigua & Barbuda	Brunei Darussalam
Azerbaijan	Iraq	Argentina	Cambodia
Belarus	Israel	Aruba	Chinese Taipei
Bosnia & Herzegovina	Jordan	Bahamas	Christmas Is.
Bulgaria	Kuwait	Barbados	Cocos (Keeling) Is.
Croatia	Lebanon	Belize	Cook Is.
Cyprus	Oman	Bermuda	Fiji
Czech Republic	Qatar	Bolivia	French Polynesia
Estonia	Syria Arab Rep.	Brazil	Guam
Georgia	West Bank & Gaza	British Virgin Is.	Hong Kong, China
Greenland	Yemen, Rep.	Cayman Is.	Johnston Is.
Hungary		Chile	Kiribati
Kazakhstan		Colombia	Korea, Dem. Rep.
Kyrgyz Republic		Costa Rica	Lao PDR
Latvia		Cuba	Macao, China
Lithuania		Dominica	Marshall Islands
Macedonia, FYR		Dominican Rep.	Micronesia, Fed. Sts.
Malta		Ecuador	Midway Is.
Moldova		El Salvador	Mongolia
Poland		Falkland Is. (Malvinas)	Myanmar
Romania		French Guiana	Nauru
Russian Federation		Grenada	New Caledonia
Slovakia		Guadaloupe	Niue
Slovenia		Guatemala	Northern Marianas Is.
Tajikistan		Guyana	Palau
Turkiye		Haiti	Papua New Guinea
Turkmenistan		Honduras	People's Republic of China
Ukraine		Jamaica	Pitcairn Is.
Uzbekistan		Martinique	Samoa
Yugoslavia, Fed. Rep.		Mexico	Solomon Islands
		Montserrat	Tokelau
		Netherland Antilles	Tonga
		Nicaragua	Tuvalu
		Norfolk Is.	Vanuatu
		Panama	Viet Nam
		Paraguay	Wake Is.
		Peru	Wallis & Futuna Is.
		Puerto Rico	
		St. Helena	
		St. Kitts & Nevis	
		St. Lucia	
		St. Pierre & Miquelon	
		St. Vincent & the Grenadines	
		Suriname	
		Trinidad & Tobago	
		Turks & Caicos Is.	
		Uruguay	
		US Virgin Is.	
		Venezuela	