

Department Administrative Order No. 19-04

Series of 2019

**Subject: GUIDELINES IN RESOLVING EXPORT TRADE COMPLAINTS
FORMALLY LODGED WITH THE DEPARTMENT OF TRADE
AND INDUSTRY REVISING DAO NO. 14-1, SERIES OF 2014**

Whereas, the Department of Trade and Industry is mandated to oversee the country's export trade program pursuant to Section 3 (n) of Executive Order (EO) 133 Series of 1987 and Title X, Chapter 1, Section 3 (13) of EO 292 Series of 1987.

Whereas, the DTI Secretary may establish mediation systems and procedures for the pacific settlement of any trade and industry related disputes selected by him pursuant to Article III, Section 4 of EO 913 Series of 1983.

Whereas, one of the services of DTI is to match both Philippine suppliers/exporters and foreign buyers and promote ethical business practices to further enhance the image of the Philippines as a reliable supplier of goods and services in the global market;

Whereas, the DTI continuously receives export trade complaints relating to exported Philippine goods and services, which, if remain unresolved, will seriously affect the image of the Philippines as a reliable source of goods and services.

Whereas, the DTI, in the pursuit of protecting not only the said image of the Philippines but also the consumers, may investigate violations of Trade and Industry Laws and impose administrative penalties pursuant to Section 5 of EO 913 Series of 1983;

Whereas, the DTI seeks to promote speedy resolution of export trade complaints through out of court settlement or mediations.

NOW THEREFORE, premises considered, the following guidelines are hereby prescribed for the compliance, guidance and information of all concerned:

1. SCOPE: This Department Administrative Order (DAO) applies only to disputes relating to export trade transactions involving exportable goods and services from the Philippines, including but not limited to:

- 1.1 Non-Payment of Delivery;
- 1.2 Non-Delivery of Paid Order;
- 1.3 Cancelled Letter of Credit Order (CL/C);
- 1.4 Short Shipment (SS);
- 1.5 Non-Compliance to Quality Specification (QS);
- 1.6 Unjustified non-performance of contractual obligations.

2. DEFINITION OF TERMS: For purposes of this DAO, the following definitions shall be observed:

- 2.1 *"Agent"* – any person, natural or juridical, authorized to act on behalf of the complainant or the respondent.
- 2.2 *"Complainant"* - the Mediation Party who is either the buyer or exporter of exportable Philippine goods or services, or agent of the foregoing or a real party in interest seeking relief or recovery relating to an export trade transaction.

- 2.3 “*Confidential Information*” – means any information, relative to the subject of mediation, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. It shall include (1) communication, oral or written, made during mediation, including any memoranda, notes or work product of the neutral party or non-party participant; or (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing or reconvening mediation.
- 2.4 “*Delisting*” – removal from the watchlist upon the conditions set forth in this DAO.
- 2.5 “*DTI Offices*” – the Offices, Bureaus, and Services of the Department proper, DTI Regional Offices, and DTI Provincial offices.
- 2.6 “*Export Marketing Bureau (EMB)*” - formerly the Bureau of Export Trade Promotion (BETP) created under Section 10 (d) of EO 133 Series of 1987, the export marketing arm of the government under the DTI. The EMB provides frontline assistance, information, and specialized consultancy services to the general public and to all exporters both potential and established. It seeks to enable Philippine exporters to compete with world-class products and services in the international market.
- 2.7 “*Export Trade Complaint*” - refers to any written or verbal statement made personally or sent by any electronic means or otherwise, expressing grievance related to export trade transactions of Philippine goods or services, which, if remains unresolved, will seriously affect the business of Filipino exporters and the image of the Philippines as a reliable source of goods and services.

- 2.8 “*Export Trade Complaints Committee (ETCC)*” - an inter-agency committee created pursuant to DAO 1 Series of 1993 that shall recommend specific actions on export trade complaints.
- 2.9 “*Export Trade Complaints Committee (ETCC) Secretariat*” - under the Export Assistance and Business Matching Division of the EMB that designates Mediation Officers to mediate export trade complaints.
- 2.10 “*Exportable Goods*” - refer to articles, wares, merchandise, and any other items from the Philippines which are subject of exportation.
- 2.11 “*Exportable Services*” – services from the Philippines for export which shall be limited to information technology services, construction services, and other services as defined jointly by the Department of Finance and the Department of Trade and Industry and need not be rendered abroad as, by the nature of some services, the sale of the same takes place in the Philippines.
- 2.12 “*Mediation*” – the process in which the Mediation Officer facilitates communication and negotiation, and assist the parties in reaching a voluntary agreement regarding a dispute.
- 2.13 “*Mediation Officer*” – the technical staff who is assigned to evaluate and process an export trade complaint and who shall be under the direct supervision of the ETCC.
- 2.14 “*Mediation Party*” – a party who participates in mediation and whose consent is necessary to resolve the dispute;
- 2.15 “*Philippine Trade and Investment Center (PTIC)*” – the DTI overseas post where the trade representative is assigned that provides commercial representation for the Philippines to foreign countries.

- 2.16 “*Respondent*” – the party who is either the buyer or exporter of exportable Philippine goods or services, or agent of the foregoing or any real party in interest against whom some relief or recovery is sought relating to an export trade transaction.
- 2.17 “*Supervising Undersecretary*” – the DTI Undersecretary designated by the Secretary of Trade and Industry to supervise the EMB who is hereby authorized to act on behalf of the Secretary of Trade and Industry in all decisions relating to this Department Administrative Order.
- 2.18 “*Watchlist*” – the list of individuals and/or entities whose inclusion is based on ETCC Resolutions and is published to caution the public.

3. COMPOSITION OF THE ETCC

- 3.1 Chairperson; Functions – the ETCC shall be headed and presided by the EMB Director who shall act as the Chairperson. Should the need arise, the Supervising Undersecretary may designate an Alternate Chairperson from among the assistant directors and officers-in-charge of the EMB.
- 3.2 Members:
- 3.2.1 The Director of the DTI Legal Service or its duly authorized representative;
- 3.2.2 A representative from the accredited exporter organization under Republic Act 7844 or the Export Development Act.
- 3.2.3 Resource Member – any relevant government agencies, organization, or trade associations requested to provide

pertinent information, advice, and assistance as may be needed in resolving the export trade complaints.

4. POWERS AND FUNCTIONS OF THE ETCC

- 4.1 The ETCC may require the submission of relevant documents and pieces of evidence from the parties and/or for purposes of the resolution.
- 4.2 The ETCC may request relevant government agencies, organization, or trade associations to provide pertinent information, advice, and assistance as may be needed in resolving the export trade complaints.
- 4.3 The ETCC may refer the complaint to DTI attached agencies or appropriate government agencies for its proper disposition.
- 4.4 The ETCC shall recommend to the Supervising Undersecretary the individuals and/entities for watchlisting or delisting.
- 4.5 The ETCC may recommend the commencement of formal administrative action in case it has prima facie findings of any violation of any Trade and Industry Law by any of the parties in the export trade complaint.

5. ETCC SECRETARIAT

- 5.1 The ETCC Secretariat shall perform the following functions:
 - 5.1.1 Receive and process export trade complaints;
 - 5.1.2 Prepare and send correspondence;
 - 5.1.3 Designate mediation officers who will act on the export trade complaints;
 - 5.1.4 Prepare the notice and the agenda of meetings of the ETCC;

- 5.1.5 Prepare the draft resolutions to be approved and issued by the ETCC;
- 5.1.6 Manage the files, records and documents in connection with export trade complaints;
- 5.1.7 Furnish copies of the watchlist to ETCC members and other DTI Offices;
- 5.1.8 Perform other functions that may be required by the ETCC.

6. MEETINGS OF THE ETCC

- 6.1 The ETCC shall meet once a month. Provided, that the Chairperson may convene the ETCC anytime whenever he or she deems it necessary.
- 6.2 If, however, there are no cases to be deliberated upon during the month, the ETCC may opt not to meet and the ETCC Secretariat shall issue a notice to that effect.
- 6.3 **QUORUM AND VOTING** - The presence of the Chairperson, the representative of the DTI Legal Service, and another member of the ETCC shall constitute a quorum. The vote of majority of the members present there being a quorum shall be necessary for the adoption of any act, order, or resolution.

7. COMPLAINTS PROCEDURE

- 7.1 **PLACE OF FILING** - Export trade complaints may be filed with the EMB, any DTI Office, DTI attached agencies, or the PTIC. The export trade complaint shall be immediately endorsed to the ETCC secretariat.
- 7.2 **FORM OF COMPLAINT** - All export trade complaints must be in writing and signed by the complainant and may be in electronic document form. The complaint may be filed personally, by mail, or by

electronic means. Copies of pertinent documents supporting the complaint must be attached to the complaint.

7.3 APPEARANCE OF PARTIES - If a mediation party is represented by any other person, the representative must be clothed with the proper special power of attorney or board resolution, as the case maybe, with full power to enter into a compromise agreement or settlement. Such authority must be presented prior to mediation.

7.4 DELIVERY AND RECEIPT OF WRITTEN COMMUNICATIONS – Notices, resolutions, and other written communications may be served on the parties and/or representative by the ETCC Secretariat personally by its process server, by registered mail, or by courier service. Such communication shall be deemed to have been received on the date it is delivered at the parties' or representative's address of record, place of business, residence or last known address.

Except as the parties may agree or the ETCC may direct otherwise, notices, resolutions, and other written communications may be delivered by electronic mail or facsimile transmission or by such other means that will provide a record of the sending and receipt thereof at the recipient's mailbox (electronic inbox). Such communication shall be deemed to have been received on the same date of its transmittal and receipt in the mailbox (electronic inbox).

7.5 NOTICE TO ANSWER - The notice shall include the following:

- 7.5.1 A copy of the complaint;
- 7.5.2 Copies of pertinent documents supporting the complaint
- 7.5.3 An order for the respondent to file an answer fifteen (15) calendar days from receipt of the notice with a warning

that failure to file such answer will be construed as a waiver of its right to be heard in the evaluation for watchlisting.

7.5.4 In case the respondent is located outside the Philippines, the ETCC shall request the PTIC for assistance and furnish it with a copy of the notice.

7.6 **MEDIATION** - If the respondent files its answer and agrees to take part in the mediation, the Mediation Officer shall commence with mediating the case and shall schedule the date of the initial conference. If the respondent, at any stage of the proceeding, refuses to take part in the mediation process, the Mediation Officer shall declare a failure of mediation.

7.7 **ROLE OF MEDIATION OFFICER** – The Mediation Officer shall abide by the following guidelines:

7.7.1 Prior to the conduct of the mediation proceedings, the Mediation Officer shall explain to the parties the objectives, nature and rules of the mediation process and, upon the parties' agreement to submit to the same, proceed to facilitate communication and negotiation in order to assist the mediation parties in reaching a voluntary agreement regarding their dispute;

7.7.2 A mediator shall keep in utmost confidence all confidential information obtained in the course of the mediation process. A mediator shall discuss issues of confidentiality with the mediation parties before beginning the mediation process including limitations on the scope of confidentiality and the extent of confidentiality provided in any private sessions or communications that the mediator holds with a mediation party.

7.7.3 A mediator shall make reasonable efforts to ensure that each mediation party is free and able to make whatever choices he/she desires regarding participation in mediation generally and regarding specific settlement options. A mediator shall recognize and put in mind that the primary responsibility of resolving a dispute and the shaping of a voluntary and uncoerced settlement rests with the parties.

7.7.4 Where appropriate and where either or both mediation parties are not represented by counsel, a mediator shall recommend that the parties seek outside professional advice to help them make informed decision and to understand the implications of any proposal; and suggest that the parties seek independent legal and/or technical advice before a settlement agreement is signed.

7.8 PERIOD OF MEDIATION

7.8.1 The period for mediation shall be thirty (30) calendar days from the date of initial conference, unless there are sincere efforts to settle and both mediation parties agree to an extension which shall not exceed fifteen (15) calendar days.

7.8.2 If all mediation parties can personally appear during the mediation, there shall be a maximum of three (3) mediation conferences.

7.8.3 If a mediation party cannot personally appear for mediation conferences such as when it has no representative in the Philippines, the Mediation Officer may communicate with the mediation parties within the same period for mediation as

often as necessary as the mediation parties may consent using the most efficient means of communication.

7.9 MEDIATION AGREEMENT – If an agreement is reached, it shall be reduced into writing and signed by the mediation parties. A copy of the signed agreement must be submitted to the mediation officer in order to declare the mediation as settled.

7.10 DOCUMENTARY EVIDENCE - The mediation parties must submit documentary evidence to support their claim or defense. Whenever possible, certified true copies of documents or the faithful reproduction thereof that are in the possession or custody of the parties should be submitted. Supporting documents include but not limited to:

- a. Contracts;
- b. Confirmed Pro-forma Invoice;
- c. Proof of Payment;
- d. Proof of Delivery;
- e. Bill of Lading;
- f. Other relevant documents or photos.

7.11 EXECUTIVE SUMMARY

7.11.1 After the termination of the mediation proceedings or should there be none, after evaluation of the case, the Mediation Officer shall prepare its executive summary to be submitted to the ETCC.

7.11.2 The executive summary shall not contain confidential information obtained during the mediation but shall merely contain the following:

- 7.11.2.1 The general facts of the case based merely on the complaint and the answer;
- 7.11.2.2 A statement that mediation has occurred or that there was failure of mediation;
- 7.11.2.3 The overall substance of the settlement agreement, if any; and
- 7.11.2.4 A recommendation for watchlisting, if any.

7.12 RESOLUTION

- 7.12.1 Upon receipt of the Mediation Officer's executive summary, the ETCC shall evaluate and deliberate upon it and prepare a resolution for consideration of the Supervising Undersecretary.
- 7.12.2 Should there be a recommendation for watchlisting, the ETCC shall likewise evaluate the complaint; the answer, if any; and other pertinent documents attached thereto, but shall not require the Mediation Officer to disclose any information obtained during the mediation proceedings.
- 7.12.3 Thereafter, the ETCC shall prepare a resolution, signed by the approving members, for consideration of the Supervising Undersecretary.
- 7.12.4 Within a period not exceeding fifteen (15) calendar days from receipt, the Supervising Undersecretary shall approve or disapprove the ETCC's resolution.
- 7.12.5 Should the Supervising Undersecretary disapprove any recommendation by the ETCC, such disapproval, shall be based only on legal, reasonable, and justifiable grounds to be expressed in writing, addressed to the ETCC.

7.12.6 Upon approval by the Supervising Undersecretary of the Resolution, the Parties shall be notified thereof in writing within seven (7) calendar days from approval.

8. CLASSIFICATIONS OF ETCC FINDINGS

8.1 Dismissed – on the ground of failure to substantiate the allegations of the complaint or lack of basis to hold respondent liable for the complaint.

8.2 Watchlisting – notwithstanding the outcome of the mediation proceeding, watchlisting may be effected based on the following grounds:

8.2.1 The respondent used a fictitious name or address;

8.2.2 The respondent is involved in two (2) or more export trade complaints; or

8.2.3 There is a substantial finding, based on past and present complaints, that the acts complained of would seriously affect the image of the Philippines as a reliable supplier of goods or services.

8.3 Settled – an amicable settlement between the parties was reached through the intervention of the ETCC.

8.4 **CONSEQUENCES OF WATCHLISTING** – Any party included in the watchlist, cannot avail of the following assistance/service from DTI:

8.4.1 Recommendation to any private entity, local or foreign, for the giving of a loan, guarantee, grant, subsidy, equity, benefit, exemption, privilege, assistance, and the like;

- 8.4.2 Recommendation to the DTI and its attached agencies for the giving of any loan, guarantee, grant, subsidy, equity, benefit, or exemption, or any privilege, assistance and the like;
 - 8.4.3 Referral to any domestic supplier or foreign buyer;
 - 8.4.4 Participation in any DTI-sponsored or organized fair, exhibit, selling and buying missions;
 - 8.4.5 Inclusion in any supplier listing, e.g. exporters directory, supplier catalog, promotional brochure and industry situationers prepared by DTI which are disseminated here and abroad; and
 - 8.4.6 Assistance or services on product design and development exporters' training; common service facilities; business advisory services; and library and information services.
 - 8.4.7 The filing of formal charges and/or recommending for the revocation of all DTI permits, registration and accreditation including, but not limited to, business name registration, Export Development Act (EDA) Accreditation.
 - 8.4.8 Removal from any supplier listing, e.g., exporters directory, supplier catalog, promotional brochure and industry situationers prepared by DTI which are disseminated here and abroad.
- 8.5 **DELISTING** – A party watchlisted may be removed therefrom and the privilege to receive assistance/service from the DTI may be restored, upon request by a party or motu proprio by the ETCC, upon the condition that the grounds for watchlisting have ceased to exist;

The declaration of delisting shall likewise be upon the discretion of the Supervising Undersecretary through a resolution prepared by the ETCC.

9. MOTION FOR RECONSIDERATION

- 9.1 Only one (1) Motion for Reconsideration may be filed within fifteen (15) calendar days from receipt of the resolution.
- 9.2 Upon receipt of the motion, the other party shall be asked to file a comment and/or opposition within ten (10) calendar days from receipt of the request.
- 9.3 Thereafter, the motion and comment, if any, shall be evaluated and deliberated upon by the ETCC and shall submit its recommendation for approval by the Supervising Undersecretary.
- 9.4 The Resolution on the motion shall be final and executory.

10. FORMAL ADMINISTRATIVE ACTION FOR VIOLATIONS OF TRADE AND INDUSTRY LAWS

- 10.1 In case there is a prima facie determination by the ETCC of violation of the Business Name Law, the Consumer Act of the Philippines, or any Trade and Industry Law, the ETCC shall report the matter to the pertinent bureau/office for formal investigation.
- 10.2 In accordance with applicable DTI rules and guidelines, the recommendation must contain the following:
 - 10.2.1 A request for formal investigation;
 - 10.2.2 The facts constituting the violation of the law based from the export trade complaint; the answer, if any, without divulging information obtained from mediation proceedings.
 - 10.2.3 Supporting documents.

11. TRANSPARENCY OF INFORMATION

The watchlist shall be posted in conspicuous places within the DTI, shall be made accessible online at the DTI website, and may be sent to appropriate government agencies and exporters organizations, subject to limitations imposed by applicable laws on disclosure of certain information to the public.

12. APPLICABILITY OF OTHER RULES ON MEDIATION

Where applicable and not inconsistent with these guidelines, the rules of procedure under Republic Act 9285 or Alternative Dispute Resolution Act of 2004 shall apply suppletorily to mediation proceedings under these guidelines.

13. REPEALING CLAUSE - DAO 14-1, Series of 2014 and other orders inconsistent with the provisions of this DAO are hereby repealed.

14. EFFECTIVITY - This Order shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Makati City, February 22, 2019



RAMON M. LOPEZ
Secretary

Recommended by:



Undersecretary ROWEL S. BARBA
OIC, Trade and Investments Promotion Group