

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.

OFFICE OF THE SECRETARY

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>.

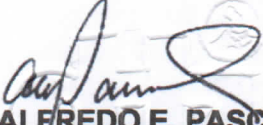
The notification and consultation requirements under Article 12 of the WTO Safeguards Agreement and Section 17 of RA 8800 and its IRR shall be complied with. Imports originating from member states of Free Trade Agreements that the Philippines entered into, such as ASEAN Trade in Goods Agreement (ATIGA), 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

ALFREDO E. PASCUAL

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

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