



REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

**IN THE MATTER OF THE CONDUCT OF AN
EXPIRY REVIEW OF THE ANTI-DUMPING
DUTY IMPOSED AGAINST IMPORTATIONS
OF WHEAT FLOUR FROM THE REPUBLIC
OF TÜRKIYE**

**(AHTN 2022/2017 Subheading Nos.
1101.00.11 and 1101.00.19)**

**FOR: ANTI-DUMPING MEASURE
TCI (AD) No. AD-2023-ER2-WheatFlourTR**

**Philippine Association of Flour Millers, Inc.
(PAFMIL)**

Petitioner.

ORDER OF PRELIMINARY CONFERENCE

Pursuant to paragraph 2, Section 6 of Commission Order No. 2021-01 (*Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act No. 8752*), the Tariff Commission (TC or Commission) hereby issues this Order covering matters that were taken up and agreed upon by the parties who were present during the Preliminary Conference held on 28 March 2023.

1. TIMELINES

ACTIVITY	DATE/DEADLINE
Conduct of Data Verification (Local and Foreign)	Starts April 2023
Request for Inclusion of Parties	19 April 2023
Submission of Initial Memoranda/Position Papers	21 April 2023
Issuance of the Commission's Staff Report (Non-Confidential)	09 June 2023 (indicative)
Submission of Comments on the Commission's Staff Report	19 June 2023 (indicative)
Submission of: (1) Affidavits of Witnesses (2) List of Proposed Additional Issues for the Public Hearing	19 June 2023 (indicative)
Conduct of Public Hearing/s	26 – 30 June 2023 (indicative)
Submission of Amended Memoranda/Final Memoranda/Position Papers	10 July 2023 (indicative)
Disclosure of Essential Facts to All Interested Parties	17 July 2023 (indicative)
Submission of Comments on the Essential Facts with Supporting Documents	24 July 2023 (indicative)
Submission of Final Report to the Department of Agriculture (DA) Secretary	August 2023 (indicative)

Timelines are indicative and may be subject to change due to circumstances beyond the Commission's control, which may include requests for extension of submission of required information or documents and requests for re-scheduling of data verification.

2. RULES OF PROCEDURE

Commission Order No. 2021-01 on the *Revised Rules of Procedure for the Conduct of Formal Investigations Pursuant to Republic Act No. 8752* provides the procedure that will govern the conduct of Formal Investigation on the second expiry review on the anti-dumping duty imposed against importations of wheat flour from the Republic of Türkiye.

3. NATURE OF INVESTIGATION

The investigation of the Commission is fact-finding and administrative in nature. It shall be conducted in a summary manner. However, the Commission may require interested parties to formally present evidence for purposes of determining and clarifying factual matters that are relevant in the conduct of the investigation.

During the course of the investigation, the Commission may issue and apply procedural directions to secure just and expeditious determination of matters in issue.

4. APPLICATION OF THE RULES OF COURT

The relevant provisions of the Rules of Court of the Philippines, whenever practicable and convenient, may be applied suppletory or by analogy in the implementation of Commission Order No. 2021-01. However, no dilatory tactics or unnecessary or unjustified delays shall be allowed and the technical rules of evidence shall not be applied.

5. APPEARANCE OF COUNSEL AND PARTIES

Parties may appear by themselves or through their authorized representative/s or counsel/s. Should parties be represented by counsel/s or authorized representative/s, the necessary authority and the contact details of the counsel/s or representative/s thereof must be submitted to the Commission as soon as practicable. Counsel/s or authorized representative/s of parties shall have authority to bind their clients in all matters of procedure.

The Commission shall post the list of counsels/representatives, and their respective contact details, of interested parties on the Commission's website for purposes of copy furnishing of submissions to other parties.

6. INCLUSION OF PARTIES

As a general rule, parties who did not participate during the preliminary investigation conducted by the Department of Agriculture (DA), TC original investigation, and the first expiry review, have no legal personality to participate in the formal investigation on the second expiry review, including the public hearings.

However, for valid reasons, an interested party may file a written request with the Commission to be included in the formal investigation within thirty (30) calendar days from commencement of the formal investigation. Once the request is approved by the Commission, the party shall be required to submit a fully accomplished Commission questionnaire and other relevant data and information that can be subjected to verification, within fifteen (15) working days from receipt of notice, as an indispensable requirement for inclusion of a party in the proceedings.

7. FORMAL REQUIREMENTS

The original copy of all written submissions shall be signed by the party or authorized representative/s and shall show the contact details of the same and must indicate the following case/docket number: *TCI (AD) No. AD-2023-ER2-WheatFlourTR*. The signature of the party or its representative on any document filed with the Commission constitutes as a certification that the signatory has read and knows the content of the submission and that to the best of the signatory's knowledge, the information contained therein is based on a well-grounded fact and is warranted by existing law or it is not interposed for any improper purpose.

All written submissions, including supporting documents, shall be in hard copies [eight (8) copies of confidential version and two (2) copies of non-confidential version], clearly marked confidential or non-confidential with accompanying electronic copies in file format acceptable to the Commission. Copies of submissions not otherwise confidential shall be served to the other parties.

8. MODES OF SERVICE/NOTICE

Service of pleadings and notices may be made using personal service, registered mail, special courier, or electronic mail. The date of electronic mail shall be deemed to be the date of service. A notice to counsel representing a party is considered notice to the latter.

In case of voluminous pleadings or documents and/or numerous parties, the Commission may, upon proper motion of a party, waive the requirement of service, provided that a copy of such pleadings or documents together with its annexes is filed with the Commission and made available for examination and reproduction and the notice of such filing and availability is duly served on the parties by the party filing it.

9. SUBMISSION OF INITIAL MEMORANDA/POSITION PAPERS

The parties shall, within fifteen (15) working days from termination of the Preliminary Conference, submit to the Commission their respective memoranda/position papers and documentary evidence and information in support of their position/s. Copies of these submissions not otherwise confidential shall be served to the other parties.

10. RECOURSE TO OTHER DATA AND INFORMATION

The Commission may, in addition to the pertinent documents forwarded by the Secretary of Agriculture, and the information and/or submissions by the parties, request additional data and information from other sources, both domestic and foreign, to enable it to support its findings. Without the required submissions from the parties, the Commission shall base its findings on the best available information. If necessary, the Commission may seek the opinion of experts or other resource persons on an issue or subject matter relevant to the present case.

11. TREATMENT OF CONFIDENTIAL INFORMATION

Information which is confidential shall not be disclosed to the public without the express authority of the owner of the information.

Parties providing confidential information shall submit two (2) copies of non-confidential summaries thereof to be placed in a public file and made available to all interested parties upon the initiation of the investigation. These summaries must contain sufficient details to permit a reasonable understanding of the confidential information to enable other parties to respond to claims based on such information. In exceptional circumstances wherein summarization of confidential information is not possible, the party must state the reason/s why it cannot be provided.

A party claiming confidentiality is required to provide justifications why said information can be considered as such. Should there be an issue on the nature of the information, the Commission shall issue an appropriate Order stating the reasons for its finding/s.

Where any request for confidentiality is not warranted or the party is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, such information may be disregarded by the Commission, unless it can be demonstrated to the Commission's satisfaction from appropriate sources that the information is correct.

12. MAINTENANCE OF PUBLIC FILE

A public file shall be maintained by the Commission. Except for confidential information, it shall contain a copy of all submissions from interested parties and all relevant correspondences concerning the investigation including the list of counsels of parties and other interested parties. The Commission may, upon written request, make available for examination and reproduction to interested parties all relevant information in its custody that are not considered confidential.

13. CONDUCT OF INSPECTIONS/VERIFICATIONS

The Commission may, in the course of the proceedings, conduct on-site or online investigations, to include ocular inspections and visits, to verify information provided or to obtain further details.

Any interested party shall, when required, allow the Commission access to necessary information, or otherwise provide the necessary information, to enable the Commission to expedite the investigation. The Commission may also visit other domestic producers, importers, foreign exporters or producers who have not provided a submission to the investigation. Visits or inspections may be conducted by the Commission even without the presence of other interested parties, and may, at its option, issue *subpoena duces tecum* for the production of documents relevant in resolving the instant investigation.

Prior to the scheduled visit, parties shall be advised of the general nature of the information to be verified and the pertinent documents that may be required during the on-site investigation. However, the Commission is not precluded from conducting further verification and inquiry on other relevant information during the investigation.

Without the required information/inspection/verification, the Commission will base its findings on the best available information.

14. ISSUANCE OF STAFF REPORT AND COMMENTS THERETO

Prior to the scheduled public hearing, the Commission shall issue a public version of a Staff Report which shall cover, among others, the Commission's findings on price difference, dumping, volume of dumped imports, and other relevant data and information pertinent to the investigation duly verified.

All identified interested parties shall be provided a copy of the Staff Report and within five (5) working days from receipt thereof, submit their comments on the aspect of price difference as this matter will be binding and excluded for discussion in the public hearing. If no comment is submitted, then the factual findings on price difference of the Commission contained in the Staff Report will be binding to the party who did not submit its comment.

15. SUBMISSION OF AFFIDAVITS OF WITNESSES AND LIST OF ADDITIONAL ISSUES FOR THE PUBLIC HEARING

At least five (5) working days before the scheduled public hearing, parties are required to submit to the Commission affidavits of their witnesses which shall serve as the direct examination of the witness, copy the opposing parties. Non-submission of issues/affidavits of witnesses as prescribed above shall bar the presentation of the same during the public hearing.

Should a party desire to submit additional issues for the public hearing, other than the issue on price difference which is excluded in the coverage of the matters for discussion in the public hearing, the same shall be submitted at least five (5) working days before the scheduled hearing for consideration of the Commission.

16. CONDUCT OF PUBLIC HEARING

The Commission, after due notice, shall conduct a public hearing to give all interested parties who submitted themselves to the jurisdiction of the Commission the opportunity to be heard and to present evidence, including the opportunity to respond to the presentations of other parties and to submit their views, among others, on the question on whether the expiry of the definitive anti-dumping duty would be likely, or unlikely, to lead to the continuation or recurrence of dumping or material injury. The public hearing shall be conducted continuously for not more than five (5) working days unless otherwise determined or earlier terminated by the Commission.

All interested parties may appear at the public hearing and present, under oath, evidence relevant and material to the subject matter of the investigation.

The order of the hearing shall be as follows:

- a. Presentation of evidence by the petitioner or domestic industry;
- b. Clarificatory questions/examination by oppositor/s or other interested parties;
- c. Presentation of evidence by the oppositor/s or other interested parties; and
- d. Clarificatory questions/examination by the petitioner or domestic industry.

A party who did not submit a list of issues may be deemed to have no controversial/contestable matter to raise and hence, will be given less priority in the order of parties to ask clarificatory questions during the public hearing.

Failure to appear on the scheduled public hearings is considered a waiver to propound clarificatory questions to the witnesses who were presented on that day.

17. CONDUCT OF EXECUTIVE SESSION

In the course of the proceedings, the Commission may, upon its own determination, or motion of an interested party, conduct an executive session which, unless otherwise stated, shall be attended only by the following:

- a. The party who is to present confidential information or his duly authorized representative;
- b. Authorized officials and employees of the Commission; and
- c. Counsel/s or authorized representative/s of opposing party/ies.

Unless otherwise ordered by the Commission or by a competent court, or required under existing laws, all parties present in the executive session are strictly enjoined from disclosing or discussing any and all subject matters deliberated in the executive session.

The Commission shall implement measures to ensure that confidential information are protected from any unauthorized disclosures.

18. SUBMISSION OF AMENDED AND/OR FINAL MEMORANDA/POSITION PAPER

Parties who earlier submitted their respective memoranda/position papers may submit amended and/or final memoranda/position papers to the Commission within ten (10) calendar days from termination of the public hearing.

Copies of submissions not otherwise confidential shall be served to the other parties.

19. VOLUNTARY PRICE UNDERTAKING

At any stage of the formal investigation, price undertaking shall be entertained provided that it is consistent with Republic Act No. 8752 and its Implementing Rules and Regulations and shall not be prejudicial to public interest.

Whenever practicable, the Commission shall take the initiative to exhaust all available means to effect a fair and reasonable settlement of the case. The parties will be given all the opportunities to present their proposals and/or counter-proposals. The price undertaking agreed upon shall be in writing duly signed by the parties and/or their counsels and shall be subject to approval of the Secretary of Agriculture upon the recommendation of the Commission.

20. TERMINATION OF THE INVESTIGATION

The Commission shall terminate its investigation if:

- a. There is no domestic like product to the allegedly dumped product; or
- b. The provisionally estimated margin of dumping is less than two percent (2%) of the export price; or
- c. The volume of allegedly dumped products or injury is negligible. The volume of the allegedly dumped products from a particular country shall normally be regarded as negligible if it accounts for less than three percent (3%) of the total imports of said product in the Philippines unless countries which individually account for less than three percent (3%) of the total imports of the said product in the Philippines collectively account for more than seven percent (7%) of the total imports of that product; or
- d. Parties agreed to a voluntary price undertaking.

21. DISCLOSURE OF ESSENTIAL FACTS AND COMMENTS THERETO

The Commission shall, before a final determination is made, inform all the interested parties in writing of the Essential Facts which form the basis for the decision on whether the definitive anti-dumping duties imposed should be terminated or not.

All identified interested parties will be provided a copy of the Essential Facts and within an unextendible period of five (5) calendar days from receipt thereof submit their comments with supporting documents for consideration of the Commission.

SO ORDERED.

Issued at Quezon City, Metro Manila, 31 March 2023.

MariLou P. Mendoza
Digitally signed

MARILOU P. MENDOZA
Chairperson

