

Article Contents

Title: Regulations on the Management and Supervision of Preshipment Inspections

Amended Date: 2023-11-23

Category: Ministry of Economic Affairs (經濟部)

1. Proclaimed on May 12, 1999
2. Amended on December 01, 2004
3. Amendment to Articles 2,5,10,12,17, and 18 promulgated on November 23, 2023

Article 1 These Regulations for Preshipment Inspections are enacted pursuant to the third paragraph of Article 20.1 of the Foreign Trade Act (hereafter referred to as the Act).

Article 2 The competent authority, referred to in these Regulations, is the Ministry of Economic Affairs, while the administrative management and supervision of all inspection activities are handled by the International Trade Administration (hereafter referred to as the "TITA") under these Regulations.

Article 3 The term "preshipment inspection entity" referred to in these Regulations (hereafter referred to as "inspection entity") means an entity which

is mandated by the importing government to carry out preshipment inspection on commodities being exported from this country to the importing country.

Article 4 The term “preshipment inspection” referred to in these Regulations means all the checking and verification procedures carried out by preshipment inspection entities on the qualities, quantities, prices, or customs classifications of commodities that are being exported to the importing country.

Article 5 Thirty days before an inspection entity begins to conduct preshipment inspections for the government of an importing country, the inspection entity must report in writing to the TITA and attach a copy of the contract with the importing country's government authorizing it to conduct inspection for reference.
Should any terms of this contract be altered, they must be reported to the TITA for reference within thirty days of the changes.
If the above-mentioned contract information is written in a foreign language, a translation of it into Chinese must also be attached upon submission to the TITA.

Article 6 The procedures, standards, and means of

preshipment inspections, as implemented by the inspection entities, shall be extended to all exporters.

Article 7 Inspection entities shall, on their own initiative, provide exporters with procedural information relating to the inspections.

Exporters can also request the preshipment inspection entities to provide them with the following additional information:

1. A specific description of the itemized inspection, its procedures, and standards.
2. Indexed reference materials on the preshipment inspection laws and regulations of the importing country's government.
3. The regulations for appeal procedures as specified in Article 15 to lodge complaints.

If the inspection entities alter or amend their inspection procedures and if, by the time at which the date of an inspection is arranged, the exporter has not yet been informed of this, then the exporter need not abide by such changes in the procedures implemented in that inspection.

Article 8 When an inspection entity conducts an inspection on the quantity or quality of a commodity, it shall do so according to the standards set out in the agreement between the importer and the exporter.

When there are no standards for this specified in their agreement, relevant international standards shall apply.

Article 9 Inspection entities shall only reject a contract price agreed upon between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process that conforms with the criteria stipulated in Articles 10 and 11 of these Regulations.

Article 10 When an inspection entity performs its verification of the contract price agreed between an importer and an exporter, the inspection must be conducted in accordance with the principles below. However, if the government of the importing country has additional regulations, they shall also apply.

1. In checking the export price, the price used as the standard for comparison shall be from the same or nearly the same time period, on the same or a similar commodity exported from this country, come from competitive and comparable conditions of sale, comply with customary commercial practices, and be a price after any standard discounts have been applied.
2. At the same time, the terms of the sales contract between the exporter and the importer shall take the following factors into consideration:

- (1) The commercial level and quantity of the sale,
- (2) Delivery periods and conditions,
- (3) Quality specifications,
- (4) Special design features,
- (5) Special shipping or packing specifications,
- (6) Order size
- (7) Spot sales,
- (8) Seasonal influences,
- (9) License or other intellectual property fees,
- (10) Other economic factors as deemed by the
TITA.

3. For the verification of transportation charges, the criterion used shall be that of the price of the mode of transport in this country and agreed to in the sales contract between the importer and the exporter.

The terms of price comparison in the foregoing items of these Regulations must be in accordance with the following:

1. Only prices that provide a valid basis of comparison shall be used, taking into account the relevant economic factors pertaining to the country of importation and a country or countries used for price comparison.
2. At any stage during the checking of prices, the exporter shall be given an opportunity to explain the price.

Article 11 When an inspection entity conducts its verification of the price agreed upon in the sales agreement or contract between the exporter and the importer, the following criteria shall not be used. If, however, the government of the importing country has additional regulations, they shall also apply.

1. The selling price of commodities produced in the country of importation.
2. The price of commodities for export from a country other than this country.
3. The cost of production.
4. Fabricated or arbitrary prices or values.
5. The retail price in this country.

Article 12 Inspection entities shall handle all business information received in the course of conducting inspections as confidential if it has not already been publicly announced, is not generally available to third parties, or does not already belong to the public domain.

It is incumbent upon the inspection entity to submit to the TITA in writing the procedures it has established for handling such confidential business information, and any alterations or amendments to them.

Article 13 Preshipment inspection entities shall not request exporters to provide the following information:

1. Any information related to the manner of manufacture that is patented, licensed, or undisclosed, or for which a patent is pending.
2. Technical information that has not been made public. However, such information that corresponds to international or the importing country's technical regulations or standards shall not be limited by this provision.
3. Internal pricing, including manufacturing costs.
4. Profit levels.
5. Information from the contract between exporters and their suppliers. However, when the inspection cannot be carried out, and if such contract information is not provided, the exporter shall be requested to provide the information from that contract, which is within the scope that is needed for the inspection to proceed. That information shall be provided to the inspection entity managing the inspection.

Article 14 In proceeding with the inspection of goods, preshipment inspection entities must avoid unreasonable delays.

Once an exporter and a preshipment inspection entity have agreed on an inspection date, the inspection entity shall proceed with the inspection on this date unless the exporter or force majeure prevents it, or both parties have mutually agreed

otherwise.

Within 5 days of completing its inspection, the inspection entity shall issue to either the importer or the exporter a Clean Report of Findings and when there is not a Clean Report of Findings, a detailed written explanation specifying the reasons for non-issuance shall be issued instead. In the latter situation, the inspection entity shall also provide exporters with an opportunity to present their views in writing, and, if exporters so request, the inspection entity shall arrange for re-inspection at the earliest mutually convenient date. If, however, the government of the importing country has additional regulations, those regulations shall also apply.

When a Clean Report of Findings is found to have errors, the inspection entity shall correct them and submit the corrected information to the relevant authorities immediately.

Article 15 Inspection entities shall designate, at each of their office locations, officials to receive and handle appeals by exporters. These officials shall be available to receive exporter grievances during normal business hours.

An exporter with an appeal must provide the designated official(s) with the facts concerning the specific transaction in question, the nature of the

grievance, and a proposed solution, in writing. The designated officials in the first paragraph of this Article shall, upon receiving the written complaint from an exporter, reach a decision on it as soon as possible.

Article 16 Inspection entities and exporters shall seek to resolve any dispute by way of negotiation. The following provision shall take effect from the date on which the World Trade Organization (WTO) Agreements have entered into force for the jurisdiction of the Republic of China: If an exporter has properly complied with Article 15 of these Regulations to lodge a complaint, and after two days the dispute is still unresolved, then, as in accordance with the WTO Preshipment Agreement, either party may proceed to have the dispute handled under independent review procedures.

Article 17 If a resolution is inconclusive two days after exporters have filed a written complaint with an inspection entity, exporters can propose mediation by independent review. They can apply within 14 days to the TITA in writing to propose mediation, in which case they also need to contact the inspection entity in this regard. Within 2 days of an exporter and a preshipment inspection entity agreeing to proceed with

mediation, the TITA must establish a mediation panel to handle the dispute.

Article 18 Candidates eligible to be chosen for serving on a mediation panel shall be recommended by an organization representing importers and exporters, by an organization representing preshipment inspection entities, and by the TITA. The list of such candidates shall be updated biennially. Three panelists shall be chosen to sit on the mediation panel and the TITA shall select them from the list of eligible candidates. The TITA shall also designate one other person to be present as the convener to handle the administration, documentation, and such related work for the panel. A panelist who has a personal interest with the outcome of the case must resign from and decline to sit on the panel. However, this does not apply if a disputant party on one side of the case knows that a panelist has an interest in the outcome of the case but has not raised an objection. When a panelist refuses or is unable to proceed with the work of the mediation panel, the TITA shall select a replacement panelist.

Article 19 The meeting of the mediation panel shall be convened and chaired by the convener.

The convener shall contact the mediation panelists and notify them of the meeting within 2 days before the panel is to meet unless there is some unavoidable reason preventing this.

The two parties of the dispute shall each be given fair and reasonable opportunity to state their views by the mediation panel, and when necessary, shall request the parties to supply documentation of relevant information.

The panel must complete the mediation within seven days, with at least two of the three panelists in agreement as to the suggestions of the panel as a result of the mediation. When necessary, this time limit can be extended, but only once and not for more than another seven days, and both parties shall be notified.

Article 20 As soon as the mediation panel comes to its decision as per the provisions of Article 19 above, it shall notify both parties in the dispute of its decision.

Both parties in the dispute shall then decide within seven days whether or not they accept the decision of the panel and notify the panel of this in writing.

Article 21 Mediation cases shall be terminated if any of the following situations occur:

1. The two parties in the dispute have negotiated a

settlement between themselves.

2. The mediation panel is unable to reach a decision or is unable to continue carrying on with the requirements of the mediation.
3. The party that applied for mediation withdraws its appeal.

When a case is thus terminated, the mediation panel shall notify both parties of the dispute in writing.

Article 22 These Regulations shall take effect on the date of promulgation.