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ORDINANCE NO.V OF 2015

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ORDINANCE

to reform and repeal the National Tariff Commission Act, 1990 (VI OF 1990)

WHEREAS it is expedient to provide for certain reforms in the National Tariff Commission by repealing the National Tariff Commission Act, 1990 (VI of 1990) and re-enacting it for matters connected therewith or ancillary thereto;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:—

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the National Tariff Commission Ordinance, 2015.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “Commission” means the National Tariff Commission established under section 3;

(b) “Interested party” means any party having interest in the product under investigation including domestic producers, importers, consumers, exporters, foreign producers, trade or business associations of the investigated product or such other persons or group of persons as the Commission may specifically through notification in official gazette;

(c) “Member” means a member of the National Tariff Commission and included the Chairman;

(d) “prescribed” means prescribed by rules made under this Ordinance;

(e) “Repealed Act” mean the National Tariff Commission Act, 1990 (VI of 1990).

(f) “Trade Remedy Laws” includes the Anti-Dumping Ordinance, 2000, the Countervailing Duties Ordinance, 2001, and the Safeguard Measures Ordinance, 2002.

3. **Continuation of National Tariff Commission.**—The National Tariff Commission established by the Repealed Act shall be deemed to have been established under this Ordinance. Notwithstanding the repeal of the “Repealed Act”, the Commission shall be deemed to have been validly constituted, subject to section 5, under this Ordinance and shall continue to perform its functions accordingly.

4. **Constitution of the Commission.**—(1) The Commission shall comprise five members, appointed by the Federal Government, in the prescribed

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manner. The Federal Government shall appoint one of the members to be Chairman of the Commission.

(2) The Commission shall be a body corporate having perpetual succession and a common seal. It shall have the authority and duty to exercise the functions assigned to it by or pursuant to this Ordinance or any other law for the time being in force. It shall have the power and authority to acquire, hold and dispose of property, both movable and immovable, in its own name, shall have the power and authority to open a personal ledger account in its own name and may sue and be sued in its own name.

(3) The head office of the Commission shall be at Islamabad and the Commission may establish offices at such places as it may deem necessary.

(4) No act, proceeding or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the Constitution of the Commission.

5. **Qualification and eligibility of members.**—(1) All members of the Commission shall be citizens of Pakistan and shall be employed with the Commission on a full-time basis.

(2) A member of the Commission shall,—

- (a) have at least a masters or professional degree or qualification from an accredited university or institute in international trade laws, business and commercial laws, economics, accountancy, tariffs and trade, commerce and trade, or a trade-related subject; knowledge of trade remedy Laws would be an advantage; and
- (b) have at least fifteen years of professional work experience in international trade law, business and commercial laws, economics, accountancy, harmonized tariffs, commerce and trade, tariffs and trade or other trade-related technical field; direct work experience in trade remedy laws would be an advantage.

(3) The Federal Government shall select upto two members from the Commission's experienced technical officers provided that they meet the eligibility and qualification requirements specified in sub-sections (1) and (2).

6. **Disqualification.**—(1) No person shall be appointed or continue as member or an employee of the Commission if such person,

- (a) has been convicted of an offence involving moral turpitude;
- (b) has been or is adjudged insolvent;
- (c) is incapable of discharging his duties by reasons of physical, physiological or, mental unfitness and has been so declared by a duly constituted Medical Board appointed by the Federal Government;
- (d) fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Ordinance or contravenes any of the provisions of this Ordinance pertaining to unauthorized disclosure of information.

7. **Term of office.**—(1) The Chairman and members of the Commission shall hold office for a term of five years and shall have their term extended for one additional term of three years unless the Federal Government directs otherwise.

(2) If the Chairman's position becomes vacant, the Federal Government shall appoint and notify a new member or may designate and notify the most senior member as Chairman. In the absence of either notification, the most senior member, in terms of service in the Commission, shall perform the duties and functions of the Chairman.

8. **Function of the Commission.**—(1) The functions of the Commission shall be to advise the Federal Government on,—

- (a) tariff and other trade measures to,—
 - (i) provide assistance to the domestic industry; and
 - (ii) improve the competitiveness of the domestic industry;
- (b) trade remedy actions being faced by domestic producers and exporters;
- (c) rationalization of tariff and proposals for tariff reform;
- (d) removal of tariff anomalies; and
- (e) any other matter relating to tariff or trade measures that the Federal Government may refer to the Commission.

(2) In addition to the functions specified in sub-section (1), the Commission shall also perform such functions with respect to international trade and other matters that may be assigned to it by the trade remedies laws or any other law for the time being in force.

(3) Where the Federal Government has adopted the recommendations of the Commission in whole or part, the Commission shall periodically review the effect of such recommendations and in consequence of the review may give further recommendations to the Federal Government.

(4) The Commission shall advise, where possible, the domestic exporters and producers facing trade remedy investigations abroad.

(5) The Commission shall assist the Federal Government at the World Trade Organization dispute settlement body in respect of matters pertaining to the Trade Remedy Laws, WTO Covered Agreements and disputes under other trade agreements.

(6) The Commission may undertake research to facilitate effective implementation of Trade Remedy Laws and tariff rationalisation, in a manner to be prescribed.

9. Power of Commission to make inquiries on application.—(1) In addition to the matters falling within the scope of the Trade Remedy Laws or any other law, the Commission may initiate inquiries or investigations under this Ordinance on—

- (a) an application that has been submitted by or on behalf of the domestic industry in the prescribed form and accompanied by the prescribed fee;
- (b) a reference received by it from the Federal Government; or
- (c) on its own motion.

10. Power of Commission to access information.—(1) The Commission shall have the powers to solicit, gather, obtain, and verify any relevant information for the purposes of its functions from any Ministry, Division, Federal or Provincial Department, private or public entity or agency.

(2) Notwithstanding anything contained in this Ordinance or in any other law for the time being in force, any business confidential information received or obtained, directly or indirectly, by the Commission pursuant to or in connection with an investigation, inquiry or study shall not be subject to disclosure by the Commission

to any Ministry, Division, department, agency or instrumentality of the Federal Government or a Provincial Government without the prior permission of the party submitting such business confidential information, unless that confidential business information is liable to be disclosed for National Security and Defence.

(3) The Commission shall take all acts and measures necessary to provide transparent and prompt access to information to all parties, in a prescribed manner.

11. Power of Commission as civil court.—The Commission shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (V of 1908), in respect of the following matters, namely:—

- (i) summoning and enforcing the attendance of any person and examining him on oath; and
- (ii) requiring the supply of any information and production of any document which may be useful for the conduct of its inquiry.

12. Power of Commission to make recommendations.—(1) While examining a proposal for tariff rationalisation or assistance to the domestic industry or trade measure and making recommendations to the Federal Government, the Commission shall satisfy itself on the points that:—

- (i) the quality of the product to which such protection or assistance is to be given is good and conforms to the standards laid down by the Pakistan Standards and Quality Control Authority or, where such standard has not been prescribed, it conforms to internationally accepted standards;
- (ii) the additional cost to the consumer may not be excessive; and
- (iii) the industry is not likely to need the protection or assistance after a reasonable period of time.

(2) Where it has decided to undertake any inquiry or investigation, the Commission shall take such measures as it deems necessary to ensure that all units engaged in economic activities similar to those being carried on by any industrial undertaking or trading business which has made an application or in respect of which an inquiry or investigation has been undertaken by the Commission are informed that such inquiry or investigation has been undertaken.

13. Timelines for submission of recommendations by Commission.—(1) The Commission shall complete inquiries and investigations under this Ordinance and submit a report to the Federal Government within a period not exceeding one hundred and twenty days.

(2) The enquiries and investigations undertaken by the Commission under this Ordinance shall be completed within the periods as specified in the schedule.

(3) The Federal Government shall take a decision on the recommendations of the Commission within fifteen days of the issuance of the same.

14. Delegation of powers of the Commission.—(1) The Commission, may delegate any of its functions or powers to one or more of its members or one or more of the officers, employees, consultants or agents of the Commission:

Provided that the Commission may not delegate its power or authority to initiate an investigation, to make preliminary or final determination, including review, refund and termination of investigations in cases governed by Trade remedy Laws or any other law that requires the Commission to make such determination:

Provided further that a delegation under this sub-section may be revoked or modified by the Commission at any time and shall otherwise not prevent the Commission from concurrently performing or exercising any function or power so delegated:

Provided also that the person to whom powers or functions are delegated pursuant to this sub-section shall not further delegate such powers or functions:

(2) The Commission may, by and through, one or more of its members, officers, employees and/or agents who have been duly designated by the Commission for such purpose carry out any inquiry, investigation or function necessary or appropriate for the proper exercise of the Commission's duties, powers and/or authority, whether provided under this Ordinance or any other law in any part of Pakistan or in any foreign country.

15. Meeting procedure and quorum.—(1) Decisions and determinations of the Commission shall be taken by majority vote.

(2) At least two members, one of whom shall be Chairman, shall constitute a quorum, provided that in case of quorum of two Members, the decision shall be taken by consensus.

16. Administration and Secretariat of the Commission.—(1) The Commission shall have a Secretariat which shall be headed by a Secretary to the Commission. The Secretary shall be appointed by the Commission as prescribed.

(2) The Secretary to the Commission shall perform functions and duties, including the following, namely—

(a) to keep in custody the records and seal of the Commission;

- (b) to authorize payment of monthly salaries and allowances to the employees of the Commission;
- (c) to propose budget estimates and revised budget estimates and place the same before the Commission;
- (d) to receive applications for investigations on behalf of the Commission; and
- (e) to perform any other duties that may be assigned to him by the Commission.

17. **Employees of the Commission.**—(1) The Commission may do all such acts and take all such steps as are necessary for the performance of the functions of the Commission including the appointment of such officers etc. as it considers necessary for the efficient performance of its functions, on such terms and conditions as may be prescribed.

(2) Subject to sub-section (3), the Commission may employ, on market-scale salary, consultants, agents and technical, professional and other advisers including lawyers, economists, accountants, bankers, actuaries and other professionals to do any act necessary or appropriate to the exercise of the Commission's powers or the performance of its functions as specified in section 7.

(3) The employees of the Commission and other persons authorized to perform any function under this Ordinance shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code 1860 (XLV of 1860).

18. **Terms and Conditions of services of the Commission and its Employee.**—(1) From the date of appointment, the benefits of the Commission and of an employee appointed on full-time basis in the Commission shall commensurate with market-based salaries or comparative.

(2) From the date of appointment, the pension, gratuity, GP fund and other retirement benefits of an employee appointed on full-time basis in the Commission shall be the same as Federal Government employees of the equivalent status, grade and scale.

(3) Employees appointed on full-time basis shall be provided time-scale promotions. For this purpose, the Commission shall make necessary regulations with approval of the Federal Government.

(4) All other matters relating to rules, orders, terms and conditions of services of the employees of the Commission shall be dealt with in accordance with the National Tariff Commission Employees' (Service) Rules 1995, as revised or repealed and re-enacted from time to time.

19. **Fund of the Commission.**—The fund of the Commission shall consist

- (a) grants from the Federal Government;
- (b) fee collected by the Commission;
- (c) aid from international agencies; and
- (d) such sums as the Federal Government may allocate to the Commission.

20. **Budget, audit and accounts.**—(1) The Commission shall cause proper accounts to be kept as prescribed by the Controller General of Accounts. As soon as practicable, after the end of the financial year, the Commission shall prepare a statement of accounts of the Commission for that year. This shall include a balance sheet and an account of income and expenditure.

(2) Within sixty days after the end of each financial year, the annual financial statements shall be audited by the Auditor-General of Pakistan.

(3) The auditors shall make a report to the Commission upon the balance sheet and accounts. They shall state whether the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of affairs of the Commission. In case the Auditors have called for any explanation or information from the Commission, it shall be stated by the Auditors as to whether such explanation or information was provided to the auditors to their satisfaction or not.

21. **Representation before the Commission.**—Any person duly authorized by a party is entitled to appear, plead and act on behalf of such party before the Commission.

22. **Penalty for false statement or failure to disclose correct information.**—(1) Any person who knowingly or willfully furnishes any information or document or book of accounts which he is bound to produce under this Ordinance or any Trade Remedy Law and he has reason to believe to be false or incorrect shall be liable to imprisonment for a term which may extend to three years, or a fine not exceeding five million rupees, or both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure 1898 (V of 1898), no court other than a court of sessions shall have jurisdiction to try a person charged with an offence under sub-section (1).

23. **Duty of members, officers, etc., to maintain secrecy.**—(1) Except in the performance of his duties under this Ordinance or any other Trade Remedy Law, every member, officer, consultant and adviser of the Commission shall preserve and aid in preserving secrecy with regard to all matters relating to the financial or other affairs of any undertaking or person that may come to his knowledge in the performance of his duties.

(2) Every such member, officer, consultant or adviser who communicates any such matter, except when required by law to do so or in the discharge of his duty as such, shall be punishable with imprisonment of either description for a term which may extend to three months, or with fine not exceeding five million rupees, or both.

(3) Any information referred to in sub-section (1), if prejudicial to the National Security or Defense, shall be disclosed to the Agency seeking such information, with the approval of the Commission.

24. **Disclosure of interest.**—(1) The following shall apply to all employees serving in any capacity whatsoever on the Commission.

(2) A person shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(3) A person having any interest in any matter to be discussed or decided by the Commission, shall prior to discharge of any function or business of the Commission, disclose in writing to the Secretary to the Commission, the fact of his interest and the nature thereof.

(4) Every person shall give written notice to the Secretary to the Commission of all direct or indirect pecuniary or other material or personal interests that he has or acquires in a body corporate involved in a matter at the Commission.

(5) A disclosure of interest under sub-section (2) shall be made a part of the record of the Commission in that particular matter.

(6) Where there is such disclosure of interest,—

(a) such person shall not, save as provided in sub-sections (7) and (8) take part nor be present in any investigation, research, deliberation or decision of the Commission as the case may be, and

(b) such person shall be disregarded for the purpose of constitution of a quorum or performance of a task, as the case may be.

(7) Any person who fails to disclose his interest as required by this section shall, on proof of such act, be liable to removal from the Commission.

(8) It shall be a valid defense for a person charged with the allegation of failure to disclose such interest under sub-section (7), if such person proves that he was not aware of the facts constituting such allegation and that he exercised due

care and diligence in discovering the facts which he ought reasonably to have known in the circumstances.

25. **Removal.**—Subject to sub-section (2), appointment of any member or employee of the Commission may, at any time, be revoked by order of the Federal Government if it is found that such person stands disqualified on the grounds and in the manner as prescribed.

26. **Powers to make rules.**—(1) The Commission may, with the prior approval of the Federal Government, and by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) The Commission shall make regulations for terms and conditions of employment for its employees.

27. **Indemnity.**—No suit, prosecution or other legal proceeding shall lie against any member or any officer or employee of the Commission or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance, Any Trade Remedy Laws, any rules or orders made thereunder or in respect of the publication by or under the authority of the Commission of any report, paper or proceedings.

28. **Repeal.**—The National Tariff Commission Act, 1990 (VI of 1990) is hereby repealed.

29. **Savings.**—(1) Notwithstanding the repeal under section 28, nothing in this Ordinance shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, document, or agreement made, fee directed, resolution passed, direction given, proceedings taken, or instrument executed or issued under or pursuant to the Repealed Act and any such thing, action, investigation, proceedings, order, rule, regulation, appointment, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force on the commencement date and not inconsistent with any of the provisions of this Ordinance, continue in force and have effect as if it had been respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Ordinance.

(2) Notwithstanding anything contained in any other Law, judgment or decision of the Courts, all acts, procedures and decisions of the Commission made from September 2013 shall till date, shall be deemed to have been validly made by the Commission.

30. **Ordinance to override other laws.**—The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

THE SCHEDULE

[See Section 13 (2)]

The Commission shall complete its enquiries and investigations under this Ordinance as follows, namely—

- (i) an enquiry or investigation for tariff and non-tariff protection or assistance to domestic industry shall, except in special circumstances, be completed within a period not exceeding sixty days, and in no case more than one hundred and twenty days after initiation;
- (ii) an enquiry or investigation for increase or decrease in tariff on the application of trading business or importers shall, except in special circumstances, be completed within a period not exceeding sixty days, and in no case more than one hundred and twenty days after initiation;
- (iii) an enquiry or investigation for removal of tariff anomaly shall, except in special circumstances, be completed within a period not exceeding thirty days, and in no case more than one hundred and twenty days after initiation;
- (iv) Any other matter relating to tariffs or tariff policies shall be completed expeditiously but in any event no later than one hundred and twenty days; and
- (v) an enquiry or investigation initiated on the request of the Federal Government or on its own motion depending on the nature thereof shall be completed within the time periods given in clauses (i), (ii), (iii) and (iv) above;

Provided that the Federal Government may, in situations constituting an urgency direct the Commission to expedite the enquiry or investigation to the extent possible as may be required to protect or assist the domestic industry.

Statement of Objects and Reasons

National Tariff Commission (NTC), a national organization set up under the National Tariff Commission Act 1990 (VI of 1990) is responsible for administering trade defense laws with regard to Pakistan's international treaty obligations under the WTO including the Agreement (s) on (i) Antidumping Duties; (ii) Subsidies and Countervailing Measures and (iii) Safeguards. The NTC is also meant to function as a think tank for the government on matters relating to competitiveness of the industry.

2. Of late, serious challenges have been faced by the Government on account of certain loopholes in composition and operation of the NTC involving litigation in higher courts, which has been hindering the smooth functioning of the organization on one hand and has created embarrassing situation for Pakistan at the WTO forum on the other.

3. It is therefore, expedient to provide for certain reforms by repealing the National Tariff Commission Act, 1990 (IV of 1990) and re-enacting the law i.e. National Tariff Commission Ordinance, 2015 for matters connected therewith and ancillary thereto.

4. The main objectives of establishing the National Tariff Commission through the repealed Act are as under:

- i. To minimize litigation by addressing legal loopholes in the relevant legal framework;
- ii. Expand the membership of the NTC from three members to five members with a view to provide for uninterrupted quorum for decision making;
- iii. To provide for benefitting from the technical expertise of the NTC's officers by providing to a certain extent for their employment as member;
- iv. To specify the qualifications of the members with a view to have multidisciplinary technical expertise required for sound decision making;
- v. To provide for alternate arrangement in contingencies for smoothly carrying out investigations and making determinations;
- vi. To provide for effective appellate forum to decide on petitions relating to initiation of investigations as well as final determinations.

5. After completing all the codal formalities the National Tariff Commission Bill, 2015, has been vetted by Law, Justice and Human Rights Division.

Engineer Khurram Dastgir Khan
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Minister Incharge