

[TC COMMISSION ORDER NO. 00-01, June 21, 2000]

REVISED RULES AND REGULATIONS TO GOVERN CONDUCT OF INVESTIGATION BY THE TARIFF COMMISSION UNDER SECTION 301 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED BY REPUBLIC ACT (RA) NO. 8752

Pursuant to Section 301 of the Tariff and Customs Code, as amended by RA 8752, the following revised rules and regulations are hereby promulgated for the guidance of all concerned:

SECTION 1. Commencement of Investigation . — Upon receipt of the report of preliminary findings of dumping including the records of the case from the Secretary of Trade and Industry or Secretary of Agriculture (the "Secretary"), the Tariff Commission (the Commission") shall conduct a formal investigation to determine the following:

1. If the domestic product is identical or alike in all respects to the allegedly dumped product, or in the absence of the former, another product which, although not alike in all respects, has characteristics closely resembling those of the allegedly dumped products.
2. If the allegedly dumped product is being imported into, or sold in the Philippines at a price less than its normal value and the difference, if any, between the export price and the normal value;
3. The presence and extent of material injury or the threat thereof to the domestic industry, or the material retardation of the establishment of a domestic industry producing the like product;
4. The existence of a causal relationship between the allegedly dumped product and the material injury or threat of material injury to the affected domestic industry, or the material retardation of the establishment of a domestic industry producing the like product;
5. The anti-dumping duty to be imposed; and
6. The duration of the imposition of the anti-dumping duty.

SECTION 2. Nature of Investigation . — The investigation of the Commission is fact-finding and administrative in nature wherein the quantum of proof necessary is positive evidence, i.e., direct evidence

which is verified. Except by analogy or in suppletory character and whenever practicable and convenient, the investigation precludes the adoption of the technical rules of procedure and admissibility of evidence used in regular court proceedings under the Rules of Court. The formal investigation shall be conducted in a summary manner. No dilatory tactics or unnecessary or unjustified delays shall be allowed.

SECTION 3. Notice of Formal Investigation . — Within three (3) working days from receipt of the report of the preliminary findings of dumping including records of the case from the Secretary, the Commission shall give public notice of the formal investigation and a concise summary of the anti-dumping petition through its publication in two (2) newspapers of general circulation and shall notify in writing all parties on records as identified from the report of preliminary findings of the Secretary that the case is under formal investigation and require them to appear at a Preliminary Conference to be set by the Commission within seven (7) days from commencement of the formal investigation. Concerned government agencies shall also be notified and invited to attend the preliminary conference.

SECTION 4. Preliminary Conference . — At the Preliminary Conference the following issues shall be discussed: schedule(s) and procedures of the Public Consultation, amicable settlement consistent with the domestic anti-dumping law and the World Trade Organization (WTO) procedure, i.e. price undertaking; limitation of number of witnesses, availability of non-confidential information, mode of service and any other relevant matters necessary for the expeditious and/or orderly conduct of the Public Consultation.

As a rule, parties who did not submit answers to the required questionnaires at the preliminary stage before the Bureau of Import Services (BIS), has no legal personality to appear at the hearings nor participate in the formal investigation to be conducted by the Tariff Commission.

However, for valid reasons, a party may file a Motion for Inclusion as a proper/official party with the Commission, the approval of which is subject to the discretion of the Presiding Officer who may also require such party to submit relevant data and information that can be subjected to verification as an indispensable requirement for inclusion of a party in the proceeding before the Commission.

Answers to the questionnaires of the Secretary shall form part of the records of the case and parties adopting the report of the preliminary findings by the Secretary or portion thereof shall be considered by the Commission as part of the evidence of the parties adopting them. Without the required submission of the party/parties, the Commission will base its findings on the best available information. The Commission, may require at its discretion, the parties to submit additional information necessary for the thorough investigation and evaluation of the case.

Following the Preliminary Conference, the Commission shall issue an order covering matters taken up. Parties who failed to attend, without

justifiable cause, are deemed to have waived their right to question the agreements of the parties who attended the Preliminary Conference.

SECTION 5. Initial Memoranda/Position Paper . — Within fifteen (15) days after Preliminary Conference the parties shall submit to the Commission their respective initial memoranda/position papers, affidavits of witnesses, all documentary evidence and records/information in support thereof and serve copies to the opposing parties subject to the provisions of Section 13 on Modes of Service.

SECTION 6. Price Undertaking . — At any stage of the formal investigation, price undertaking consistent with the domestic anti-dumping law and WTO formalities shall be entertained, provided that such price undertaking shall not be prejudicial to public interest. Whenever practicable, the Presiding Officer 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 reduced into writing duly signed by the parties and/or their counsels and shall be subject to approval of the Secretary upon recommendation of the Commission.

SECTION 7. Methods of Obtaining Information . — The Commission may, in addition to the pertinent records and/or documents forwarded by the Secretary and the information and/or submissions by the parties, request information, views, and recommendations from other sources and any government offices, such as: the Department of Finance and its Bureau of Customs, Department of Agriculture and Natural Resources, the Department of Trade and Industry and its Bureau of Import Services and Bureau of International Trade Relations, the Bangko Sentral ng Pilipinas, the Department of Foreign Affairs, the Board of Investments, National Statistics Office, Securities and Exchange Commission, outport price/value surveyor i.e. SGS or any other pertinent agency, or instrumentality concerned with the subject matter of the investigation.

The Commission shall require any interested party to allow the Commission access to its records, etc., or otherwise provide necessary information to enable the Commission to acquire sufficient data and information to support its findings.

The Commission may also send correspondence to other interested parties, domestic and foreign, conduct an ocular inspection, examine and/or verify books of accounts/records and financial statements, and hold conferences and consultations with the producers, traders, representatives of labor, consumers, and other sectors concerned.

SECTION 8. Verification/Ocular Inspection. — Parties who are in support for or in opposition to the application shall allow access to their books of account, records, etc., for verification and allow the Commission to conduct ocular inspection of their counterpart article and plant facilities.

The fact-finding investigation which includes verification and ocular inspection of the records, protested article and plant facilities of the

parties and other matters relevant to the investigation may be conducted by the Commission without the presence of the other party. The Commission will immediately start to conduct verification/ocular inspection upon its receipt of the preliminary findings of dumping from the Secretary.

SECTION 9. Staff Report. — Within fifty (50) days from the receipt of the preliminary findings of dumping including records of the case from the Secretary, the Commission shall prepare and issue a non-confidential version of the staff report. The staff report shall cover amongst other findings on product comparability, normal value, export price, volume of dumped imports, alleged injury to the domestic industry, and any other relevant data and information duly verified, documentary submissions made by the parties before the public consultations plus the evaluation of the results of the verification/ocular inspection conducted by the Commission.

SECTION 10. Comments on the Staff Report. — Within five (5) days from receipt, parties are given one opportunity to comment on the staff report particularly on the aspects of product comparability and price difference as these matters are excluded as matters for discussion in the Public Consultation.

SECTION 11. Public Consultation/Consultation in Camera or Executive Sessions . — The Commission, after due notification, shall conduct continuous Public Consultation to give all interested parties who submitted themselves to the jurisdiction of the Commission the opportunity to be heard, and to present evidence. Public Consultation once commenced shall continue daily with morning and afternoon sessions if necessary, for five (5) days or unless earlier terminated by the agreement of the parties. Five (5) days before the Consultation, the parties are required to submit to the Commission a list of issues they wanted explored in the Public Consultation other than the issues on product and price difference which will be excluded in the coverage of the matters for discussion in the Public Consultation. A party who does not submit a list of issues maybe 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 Consultation. Where, in any proceeding, the Commission directs a consultation/session or a portion thereof to be held in camera, it shall be attended only by:

- a. party who is to present confidential information or his duly authorized representative;
- b. officers and employees of the Commission who have been directed to attend;
- c. counsel of the other party, subject to an undertaking under oath not to disclose confidential information; and
- d. any other persons that the Commission has authorized to attend.