

**[ TC COMMISSION ORDER NO. 96-01, October 18, 1996 ]**

**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 NO. 7843**

Pursuant to Section 301 of the Tariff and Customs Code, as amended by RA 7843, and the Department of Finance Order No. 150-95, its implementing Rules and Regulations, the following revised rules and regulations are hereby promulgated for the guidance of all concerned.

SECTION 1. *Commencement of Investigation* — Upon receipt of the advice, together with the papers and documents relevant thereto, from the Secretary of Trade and Industry or Secretary of Finance (the "Secretary") that a prima facie case of dumping exists, the Tariff Commission (the "Commission") shall conduct a formal investigation to:

- a) Verify if the kind or class of article in question is being imported into, or sold, or is likely to be sold in the Philippines at a price less than its normal value;
- b) Ascertain the difference, if any, between the export price and the normal value of the article; and
- c) Determine if, as a result thereof, a domestic industry producing like article in the Philippines is being injured, or is likely to be injured, or has suffered retardation in the establishment and/or expansion of a domestic industry.

SECTION 2. *Nature of Investigation* — The investigation of the Commission is fact-finding and administrative in nature wherein the quantum of proof necessary is mere substantial evidence. Except in suppletory application and for convenience, the investigation precludes the adoption of the technical rules of procedure and admissibility of evidence under the Rules of Court.

SECTION 3. *Notice of Inquiry and/or Consultation* — Within five (5) working days from receipt of the advice, the Commission shall identify all parties concerned and shall, for purposes of exploring the possibility for amicable settlement, require them to appear for consultation on the procedure of investigation and such other related matters necessary for the speedy disposition of the case.

Questionnaires shall also be furnished the parties and shall require them to submit their respective answers/position papers within thirty (30) working days from receipt. In case any or all of the parties on record fail to submit their answers to questionnaires/position papers within the prescribed period, the Commission shall base its findings on the best available information.

SECTION 4. *Pre-Hearing Conference* — The Commission shall, within ten (10) working days from receipt of the answers to questionnaires/position papers, direct all interested parties and/or their counsels to appear for a pre-hearing conference, at a time and place fixed by the Commission, on the following issues: schedule(s) and procedures of the public hearing; limitation of a number of witnesses; possibility of obtaining stipulation; availability of non-confidential information, admission of facts and documentary evidence; and any other relevant matters necessary for the expeditious and/or otherwise orderly conduct of the hearing.

Following a pre-hearing conference, the Commission may issue an order setting out its ruling on the matters considered. Parties who failed to attend, after being notified, shall lose their right to fix the dates and/or change the scheduled dates of hearing.

SECTION 5. *Amicable Settlement* — In any stage of the proceedings, amicable settlement shall always be encouraged. Provided, it shall not be prejudicial to the public interest or to parties, or contrary to laws, rules and regulations of the Commission nor against good moral or public policy. Whenever practicable, the presiding officer must take the initiative to exhaust all available means to effect fair and reasonable settlement of the case while the parties shall be prepared to present their specific proposals or counter-proposals.

The amicable settlement shall, if agreed upon, be reduced into writing, duly signed by the parties and/or their counsels.

SECTION 6. *Methods of Obtaining Information* — The Commission, 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, 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, the Societe Generale de Surveillance, or any other pertinent agency, or instrumentality concerned with the subject matter of the investigation.

The Commission may also send correspondence to the 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 7. *Confidentiality of Information* — All information filed and submitted to the Commission shall be treated as non-confidential unless the person providing the information clearly marks at the top right portion of the document that it is confidential.

Where a person who provides information to the Commission requests that such information or portion thereof be kept confidential, he shall file with the Commission, in addition to the documents marked as "confidential", a non-confidential summary or version of the submission may be made available, upon

request, to parties on record and/or their counsels. A document containing confidential information shall be served only on the Commission.

Not all requests for confidentiality of documents and/or information shall be granted; except, however, those documents and/or information, which in the judgment of the Commission, are by itself confidential in nature. In case of disagreement between the opposing parties on whether the documents and/or information is confidential or not, the Commission's ruling thereon, after due consideration, shall be final.

SECTION 8. *Disclosure of Confidential Information* — Prior to or at the commencement of a hearing, the Commission may make available, upon request, to each party or the party's counsel all relevant information in its custody that were not considered confidential. Where the Commission, however, decides not to allow access to these information, the opposing counsel or party shall not be given copy or examine any of these information or portion thereof except the non-confidential summary or version provided in the preceding paragraph.

SECTION 9. *Hearing in Camera or Private Hearing or Executive Sessions* — Where, in any proceeding, the Commissioner directs a hearing/session or a portion thereof to be held in camera, it shall be attended only by:

- a) a person who is to present confidential information or its duly authorized representative;
- b) officers and employees of the Commission who have been directed to attend; and
- c) any other persons that the Commission has authorized to attend.

SECTION 10. *Notice of Public Hearing* — Notice to public hearing shall be provided within a reasonable period before the date of hearing. It shall be posted on the Bulletin Board of the Commission and shall be published in two (2) newspapers of general circulation in the Philippines at the expense of the protestant. It shall contain the name of the protestant, nature of the protest, trade/commodity classification and/or description of the article involved, HS heading number and rate of duty, and the time, date and place of the hearing. Copies of such notice shall be furnished the protestant, protestee and other known interested parties, trade and commercial organizations, and government agencies or entities concerned.

SECTION 11. *Public Hearing* — The Commission shall, after due notification, conduct a hearing to give all parties directly affected and such other interested parties, as in the judgment of the Commission are entitled to appear, an opportunity to be heard and to present evidence bearing on the subject matter. The purpose of this hearing is to determine whether or not protested article is imported at a price less than its normal value and, by reason thereof, the domestic industry producing like article is being injured.

SECTION 12. *Procedure of Public Hearing* — All interested parties may appear at a hearing and present, under oath, evidence relevant and material to the subject matter of the investigation. The order of the hearing shall be:

- a) Presentation of evidence by the protestant;