

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 REPU...

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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;
- b) Importer/protestee may ask clarificatory question to the protestant;
- c) Presentation of evidence by the protestee; and
- d) Protestant may ask clarificatory question to the importer/protestee.

The process of clarificatory questioning shall not be unlimited. Irrelevant, repetitious, misleading, speculative or personal questions shall not be allowed. The presiding officer may control the protracted questioning for the purpose of conserving the time of the Commission and of protecting the witness from prolonged and needless examination. Unreasonably lengthy questioning on matters, e.g., testing the credibility of the witness, bias, relation, and the like shall be discouraged.

A witness while testifying shall not be interrupted but may be asked clarificatory questions by the presiding officer. After a witness has given his testimony, he may be asked by the presiding officer and/or opposing party after being recognized by the presiding officer. No observer may participate in the proceedings unless recognized by the presiding officer and after informing the latter of his interest in the proceedings and of his willingness to take the witness stand whenever called upon to testify under oath. Refusal to take the witness stand will disqualify him/her from further participation in the proceedings.

Pending investigation and evaluation of the case, the parties are enjoined from discussing with the press or media the merits of the case.

SECTION 13. Motu Proprio Termination of Investigation — The Commission shall motu proprio terminate its investigation if the provisionally estimated margin of dumping is less than two percent (2%) of export price or the volume of dumped imports is negligible. The volume of dumped imports from a particular country is considered negligible if it accounts for less than three percent (3%) of the average monthly imports of like articles for the immediately preceding three (3) months, unless, countries which individually account for less than 3% of the average monthly imports of like articles in the Philippines collectively account for more than seven percent (7%) of the total average monthly imports of that articles for the immediately preceding 3 months.

SECTION 14. Period of Investigation — The Commission shall terminate its investigation within ninety (90) days

after the parties has submitted their memoranda and shall submit its report of findings and recommendations to the Special Committee on Anti-Dumping (the “Special Committee”) within sixty (60) working days after the termination of the investigation.

SECTION 15. Memoranda — Within ten (10) working days after the termination of public hearing, parties shall submit their respective principal memoranda. Counter memoranda shall be submitted not later than five (5) working days from receipt of principal memoranda. Parties submitting the principal memoranda shall likewise serve a copy to each opposing party, the service of which shall be duly indicated on the original copy to be submitted to the Commission.

SECTION 16. Report — The report of the Commission shall include, among others, a concise statement of the facts of the case, the main question at issue, and recommendation including the amount of dumping duty to be levied, collected or paid, if any. In the event that the Special Committee fails to decide, within fifteen (15) working days from receipt of the report as to whether or not there is dumping, the recommendation of the Commission shall be deemed approved and shall be final and executory.

SECTION 17. Motion for Reconsideration — No motion or request for reconsideration on the Commission’s findings shall, after it has been submitted to the Special Committee, be entertained regardless of whether such motion/request was filed directly with this Office or filed with the Secretary or Special committee and subsequently forwarded to the Commission. Henceforth, all new submissions which constitute the bases for the motion shall be transmitted to the Special Committee for consideration.

SECTION 18. Discontinuance/Extension or Modification of Dumping Duty — The Commission shall, on its own motion or upon application by any interested party that the imposition of a dumping duty have ceased to exist, or have diminished in extent, conduct an investigation and shall, upon findings, submit its report and recommendation to the Special Committee. The Investigation on this matter shall include a public hearing wherein all expenses for publication of notice of hearing shall be defrayed by the applicant.

SECTION 19. Counsel of Record — Any person who signs a document filed pursuant to these Rules and Regulations on behalf of any party shall be the Counsel of Record for the party commencing on the date of filing and continuing until a change, if any, is made.

A party in a proceeding may change the party’s counsel of record by serving the Commission a Notice of Change of Counsel signed by the new counsel and agreed to by the previous counsel.

SECTION 20. Presiding Officer — Hearing on the merits shall be presided by the Chairman and Member Commissioner/s or by any one of them provided that, in case of mere postponement and/or resetting of scheduled hearing, the Executive Director or any senior official of the Commission, upon instruction, may be required to preside.

SECTION 21. Postponement and/or Resetting of Scheduled Hearing — No unilateral motion, or request for postponement, or resetting of scheduled public hearing shall be granted unless presented and considered by the Commission after due notice to the other parties either by the Commission or by the requesting party. Postponement and resetting for valid reasons are generally granted; however, shall be limited only to one (1) request each of the principal party, the duration/interval of which shall not exceed five (5) working days between the scheduled date and the reset date.

SECTION 22. Venue of Public Hearing — Unless otherwise decided by the Commission to be held in another place, the public hearing shall be conducted at the Conference Room of the Tariff Commission, 5/F Philippine Heart Center Building, East Avenue, Diliman, Quezon City.

SECTION 23. Fees — Pursuant to Executive Order No. 159 and the provisions of Section 511 of the Tariff and Customs Code, as amended, the Commission shall, for purposes of implementing this investigation, collect the following fees and charges:

a) Cost of Investigations P 5,000.00

b) Copy of other documents (excluding transcript of public hearings) per page 1.50

SECTION 24. Transcript of the Proceedings — In all hearings before the Commission, it shall be the duty of the Commission's stenographer to take down all notes in the proceedings; and immediately, thereafter, shall transcribe thereof and file the same with the records of the case, duly certified, initialed on each page and signed on the last page. It shall be made available to all interested parties for a fee.

SECTION 25. Repealing Clause — This Order repeals Tariff Commission Order No. 1 dated 14 May 1973 on investigation by the Commission under Section 301 of the Tariff and Customs Code, as amended.

SECTION 26. Effectivity — The foregoing Revised Rules and Regulations shall take effect fifteen (15) days from the date of filing of three (3) certified copies thereof with the University of the Philippines Law Center, Diliman, Quezon City.

Adopted: 18 Oct. 1996

(SGD.) EMMANUEL T. VELASCO, PH.D.

Chairman

Attachment:

Schedule of Activities for Anti-Dumping Investigation for the Period Covering Ninety (90) Working Days[*]

Days
Covered

No. of
Days

Activity

Day 1

Receipt of Advice from the Secretary of DOF/DTI

1-7

7

Notice of Inquiry and/or Consultation/Questionnaires Out

8-47

40

Submission of Answers to Questionnaires/Position Papers

Day 47

Questionnaires/Position Papers In

48-59

12

Pre-hearing Conference/Hearing in Camera/Executive Session

60-61

2

Notice of Public Hearing

62-101

40

Public Hearing/Ocular

Inspection/Verification

and/or Examination of Information and/or Submissions

Day 101

Termination of Public Hearing

102-113

12

Submission of Principal Memoranda

Day 113

Deadline for Submission of Principal Memoranda

114-120

7

Period of Rebuttal/ Submission of Counter-Memoranda

Day 120

Deadline for Submission of Counter-Memoranda/End of Investigation

Total

120

[*] Adjusted to 120 calendar days, including Saturdays, Sundays and Official Holidays.

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