

**AN ACT STRENGTHENING THE MECHANISMS FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON IMPORTED SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE IN ORDER TO PROTECT DOMESTIC INDUSTRIES FROM UNFAIR TRADE COMPETITION, AMENDING FOR THE PURPOSE SECTION 302, PART 2, TITLE II, BOOK I OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

Section 1. Section 302, Part 2, Title II, Book I of Presidential Decree No. 1464, otherwise known as the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 302. Countervailing Duty. -

"Whenever any product, commodity or article of commerce is granted directly or indirectly by the government in the country of origin or exportation, any kind or form of specific subsidy upon the production, manufacture or exportation of such product, commodity or article, and the importation of such subsidized product, commodity or article has caused or threatens to cause material injury to a domestic industry or has materially retarded the growth or prevents the establishment of a domestic industry as determined by the Tariff Commission (hereinafter referred to as the 'Commission'), the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, or the Secretary of Agriculture, in the case of agricultural product, commodity or article (both of whom are hereinafter simply referred to as 'the Secretary,' as the case may be) shall issue a department order imposing a countervailing duty equal to the ascertained amount of the subsidy. The same levy shall be imposed on like product, commodity or article thereafter imported to the Philippines under similar circumstances. The countervailing duty shall be in addition to any ordinary duties, taxes and charges imposed by law on such imported product, commodity or article.

"(A) *Initiation of Action.* - A countervailing action may be initiated by the following:

"(1) Any person, whether natural or juridical, who has an interest to protect, by filing a verified petition for the imposition of a countervailing duty by or on behalf of the domestic industry;

"(2) The Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, in special circumstances where there is sufficient evidence of an existence of a subsidy, injury and causal link.

"(B) *Requirements.* - A petition shall be filed with the Secretary and shall be accompanied by documents, if any, which are reasonably available to the petitioner and which contain information supporting the facts that are essential to establish the presence of the elements for the imposition of a countervailing duty, and shall further state, among others:

"(1) The domestic industry to which the petitioner belongs and the particular domestic product, commodity or article or class of domestic product, commodity or article being prejudiced;

"(2) The number of persons employed, the total capital invested, the production and sales volume, and the aggregate production capacity of the domestic industry that has been materially injured or is threatened to be materially injured or whose growth or establishment has been materially retarded or prevented;

"(3) The name and address of the known importer, exporter, or foreign producer, the country of origin or export, the estimated aggregate or cumulative quantity, the port and the date of arrival, the import entry declaration of the imported product, commodity or article, as well as the nature, the extent and the estimated amount of the subsidy thereon; and

"(4) Such other particulars, facts or allegations as are necessary to justify the imposition of countervailing duty on the imported product, commodity or article.

"A petition for the imposition of a countervailing duty shall be considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than fifty percent (50%) of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, an investigation shall be initiated only when domestic producers supporting the application account for at least twenty-five percent (25%) of the total production of like product produced by the domestic industry. In cases involving an exceptionally large number of producers, degree of support or opposition may be determined by using statistically valid sampling techniques or by consulting their representative organizations.

"Within ten (10) days from his receipt of the petition or information, the Secretary shall review the accuracy and adequacy of the information or evidence provided in the petition to determine whether there is sufficient basis to justify the initiation of an investigation. If there is no sufficient basis to justify the initiation of an investigation, the Secretary shall dismiss the petition and shall properly notify the Secretary of Finance, the Commissioner of Customs and other parties concerned regarding such dismissal. The Secretary shall extend legal, technical and other assistance to the concerned domestic producers and their organizations at all stages of the countervailing action.

"(C) *Notice to the Secretary of Finance.* - Upon his receipt of the petition, the Secretary shall, without delay, furnish the Secretary of Finance with a summary of the essential facts of the petition, and request the latter to immediately inform the Commissioner of Customs regarding such petition and to instruct him to gather and secure all import entries covering such allegedly subsidized product, commodity or article without liquidation. The Commissioner of Customs shall submit to the Secretary a complete report on the number, volume, and value of the importation of the allegedly subsidized product, commodity or article within ten (10) days from his receipt of the instruction from the Secretary of Finance, and to make similar additional reports every ten (10) days thereafter.

"(D) *Notice to and Answer of Interested Parties.* - Within five (5) days from finding of the basis to initiate an investigation, the Secretary shall notify all interested parties, and shall furnish them with a copy of the petition and its annexes, if any. The interested parties shall, not later than thirty (30) days from their receipt of the notice, submit their answer, including such relevant evidence or information as is reasonably available to them to controvert the allegations of the petition. If they fail to submit their answer, the Secretary shall make such preliminary determination of the case on the basis of the facts and/or information available.

"The Secretary shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the petition. However, after receipt of a properly documented petition and before proceeding to initiate an investigation, he shall notify the government of the exporting country about the impending investigation.

"(E) *Preliminary Determination.* - Within twenty (20) days from his receipt of the answer of the interested parties, the Secretary shall, on the basis of the petition of the aggrieved party and the answer of such interested parties and their respective supporting documents or information, make a preliminary determination on whether or not *prima facie* case exists for the imposition of a provisional countervailing duty in the form of a cash bond equal to the provisionally estimated amount of subsidy. Upon finding of a *prima facie* case, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs to collect the cash bond, in addition to the corresponding ordinary duties, taxes and other charges imposed by law on such product, commodity or article. The posting of a cash bond shall be required not earlier than sixty (60) days from the date of initiation of the investigation. The cash bond shall be deposited with a government depository bank and shall be held in trust for the respondent importer. The application of the cash bond shall not exceed four (4) months.

"The Secretary shall immediately transmit his preliminary findings together with the records of the case to the Commission for its formal investigation.

"(F) *Termination of Investigation by the Secretary or the Commission.* - The Secretary or the Commission, as the case may be, shall *motu proprio* terminate the investigation at any stage of the proceedings if the amount of subsidy is *de minimis* as defined in existing international trade agreements of which the Republic of the Philippines is a party; or where the volume of the subsidized imported product, commodity or article, actual or potential, or the injury is negligible.

"(G) *Formal Investigation by the Commission.* - Immediately upon its receipt of the records of the case from the Secretary, the Commission shall commence the formal investigation and shall accordingly notify in writing all interested parties and, in addition, give public notice of such investigation in two (2) newspapers of general circulation.

"In the formal investigation, the Commission shall essentially determine:

"(1) The nature and amount of the specific subsidy being enjoyed by the imported product, commodity or article in question;

"(2) The presence and extent of the material injury or the threat thereof to, or the material retardation of the growth, or the prevention of the establishment of, the affected domestic industry; and

"(3) The existence of a causal relationship between the allegedly subsidized imported product, commodity or article and the material injury or threat thereof to, or the material retardation of the growth, or the prevention of the establishment of, the affected domestic industry.

"The Commission is hereby authorized to require any interested party to allow its access to, or otherwise provide, necessary information to enable the Commission to expedite the investigation. In case any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period of time or significantly impedes the investigation, a final determination shall be made on the basis of the facts available.

"The formal investigation shall be conducted in a summary manner. No dilatory tactics nor unnecessary or unjustified delays shall be allowed, and the technical rules of evidence shall not be applied strictly.

"(H) *Determination of the Existence of Subsidy.* - A subsidy is deemed to exist:

"(1) When the government or any public body in the country of origin or export of the imported product, commodity or article extends financial contribution to the producer, manufacturer or exporter of such product, commodity or article in the form of:

"(a) Direct transfer of funds such as grants, loans or equity infusion; or

"(b) Potential direct transfer of funds or assumption of liabilities such as loan guarantees; or

"(c) Foregone or uncollected government revenue that is otherwise due from the producer, manufacturer or exporter of the product, commodity or article: *Provided*, That the exemption of any exported product, commodity or article from duty or tax imposed on like product, commodity or article when destined for consumption in the country of origin, and/or export or the refunding of such duty or tax, shall not be deemed to constitute a grant of a subsidy: *Provided*, further, That should a product, commodity or article be allowed drawback by the country of origin or export, only the ascertained or estimated amount by which the total amount of duties and/or internal revenue taxes was discounted or reduced, if any, shall constitute a subsidy; or

"(d) Provision of goods or services other than general infrastructure; or

"(e) Purchases of goods from the producer, manufacturer or exporter; or

"(f) Payments to a funding mechanism; or

"(g) Other financial contributions to a private body to carry out one or more of the activities mentioned in subparagraphs (a) to (f) above; or

"(h) Direct or indirect income or price support; and "(2) When there is a benefit conferred.

"(I) *Determination of Specific Subsidy.* - In the determination of whether or not a subsidy is specific, the following principles shall apply:

"(1) Where the government or any public body in the country of origin or export of the imported product, commodity or article explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

"(2) Where such government or public body through a law or regulation establishes objective criteria and conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist: *Provided*, That the eligibility is automatic and that such criteria or conditions are strictly adhered to. Objective criteria shall mean those which are neutral, do not favor certain enterprises over others, and are economic in nature and horizontal in application, such as number of employees or size of enterprise;

"(3) In case a subsidy appears to be non-specific according to subparagraphs (1) and (2) above, but there are reasons to believe that the subsidy may in fact be specific, factors that may be considered are: use of a subsidy program by a limited number of certain enterprises for a relatively longer period; granting of disproportionately large amounts of subsidy to certain enterprises; and exercise of wide and unwarranted discretion for granting a subsidy; and

"(4) A subsidy which is limited to certain enterprises located within a designated geographical region within the territory of the government or public body in the country of origin or export shall be specific.

"(J) *Determination of Injury*. - The presence and extent of material injury or threat thereof to a domestic industry, or the material retardation of the growth, or the prevention of the establishment of a nascent enterprise because of the subsidized imports, shall be determined by the Secretary or the Commission, as the case may be, on the basis of positive evidence and shall require an objective examination of:

"(1) The volume of the subsidized imports, that is, whether there has been a significant increase either absolute or relative to production or consumption in the domestic market;

"(2) The effect of the subsidized imports on prices in the domestic market for the like product, commodity or article, that is, whether there has been a significant price undercutting, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred to a significant degree;

"(3) The effect of the subsidized imports on the domestic producers of the like product, commodity or article, including an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry concerned, such as, but not limited to, actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual or potential negative effects on the cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on the support programs of the national government; and

"(4) Factors other than the subsidized imports which at the same time are injuring the domestic industry, such as: volumes and prices of non-subsidized imports of the product, commodity or article in question; contraction in demand or changes in the patterns of consumption; trade restrictive practices of and competition between the foreign and domestic producers; developments in technology and the export performance and productivity of the domestic industry.

"In determining threat of material injury, the Secretary or the Commission, as the case may be, shall decide on the basis of facts and not merely allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidized imports would cause injury should be clearly foreseen and imminent considering such relevant factors as:

"(1) Nature of the subsidy in question and the trade effects likely to arise therefrom;

"(2) Significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importations;

"(3) Sufficiently freely disposable, or an imminent substantial increase in, capacity of the exporter of such subsidized imported product, commodity or article indicating the likelihood of substantially increased subsidized imports to the domestic market, taking into account the availability of other markets to absorb the additional exports;

"(4) Whether these subsidized imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and will likely increase demand for further imports; and

"(5) Inventories of the product, commodity, or article being investigated.

"In the case where the effect of the subsidized import will materially retard the growth or prevent the establishment of a domestic industry, information on employment, capital investments, production and sales, and production capacity of said domestic industry can be augmented or substituted by showing through a factual study, report or other data that an industry which has potential to grow domestically is adversely affected by the subsidized import. For this purpose, the Department of Trade and Industry for non-agricultural products, and the Department of Agriculture for agricultural products, shall conduct continuing studies to identify and determine the specific industries, whether locally existing or not, which have the potential to grow or to be established domestically and whose growth or establishment will be retarded or prevented by a subsidized import.

"(K) *Cumulation of Imports*. - When imports of products, commodities or articles from more than one (1) country are simultaneously the subject of an investigation for the imposition of a countervailing duty, the Secretary or the Commission, as the case may be, may cumulatively assess the effects of such imports only if:

"(1) The amount of subsidization established in relation to the imports from each country is more than de minimis as defined in existing international trade agreements of which the Republic of the Philippines is a party; and

"(2) The volume of such imports from each country is not negligible; and

"(3) A cumulative assessment of the effects of such imports is warranted in the light of the conditions of competition between the imported products, commodities or articles, and the conditions of competition between the imported products, commodities or articles and the like domestic products, commodities or articles.

"(L) *Public Notices and Consultation Proceedings*. - The Secretary or the Commission, as the case may be, shall make public notices and conduct consultation with the government of the exporting country when:

"(1) Initiating an investigation;

"(2) Concluding or suspending an investigation;

"(3) Making a preliminary or final determination;

"(4) Making a decision to accept an undertaking or the termination of an undertaking; and

"(5) Terminating a definitive countervailing duty.

"(M) *Voluntary Undertaking*. - When there is an offer from any exporter of subsidized imports to revise its price, or where the government of the exporting country agrees to eliminate or limit the subsidy or take other measures to that effect, the Commission shall determine if the offer is acceptable and make the necessary recommendation to the Secretary. If the undertaking is accepted, the Secretary may advise the Commission to terminate, suspend or continue the investigation. The Secretary may also advise the Commission to continue its investigation upon the request of the government of the exporting country. The voluntary undertaking shall lapse if there is a negative finding of the presence of a subsidy or material injury. In the event of a positive finding of subsidization and material injury, the undertaking will continue, consistent with its terms and the provisions of this section.

"(N) *Final Determination and Submission of Report by the Commission*. - The Commission shall complete the formal investigation and submit a report of its findings to the Secretary within one hundred twenty (120) days from receipt of the records of the case: *Provided, however*, That it shall, before a final determination is made, inform all the interested parties of the essential facts under consideration which form the basis for the decision to impose a countervailing duty. Such disclosure should take place in sufficient time for the parties to defend their interests.

"(O) *Imposition of Countervailing Duty*. - The Secretary shall, within ten (10) days from his receipt of an affirmative final determination by the Commission, issue a department order imposing the countervailing duty on the subsidized imported product, commodity or article. He shall furnish the Secretary of Finance with the copy of the order and request the latter to direct the Commissioner of Customs to cause the countervailing duty to be levied, collected and paid, in addition to any other duties, taxes and charges imposed by law on such product, commodity or article.

"In case of an affirmative final determination by the Commission, the cash bond shall be applied to the countervailing duty assessed. If the cash bond is in excess of the countervailing duty assessed, the remainder shall be returned to the importer immediately: *Provided*, That no interest shall be payable by the government on the amount to be returned. If the cash bond is less than the countervailing duty assessed, the difference shall not be collected.

"If the order of the Secretary is unfavorable to the petitioner, the Secretary shall, after the lapse of the period for appeal to the Court of Tax Appeals, issue through the Secretary of Finance a department order for the immediate release of the cash bond to the importer.

"(P) *Duration and Review of Countervailing Duty*. - As a general rule, any imposition of countervailing duty shall remain in force only as long as and to the extent necessary to counteract a subsidization which is causing or threatening to cause material injury. However, the need for the continued imposition of the countervailing duty may be reviewed by the Commission when warranted, motu proprio or upon direction of the Secretary.

"Any interested party may also petition the Secretary for a review of the continued imposition of the countervailing duty: *Provided*, That at least six (6) months have elapsed since the imposition of the countervailing duty, and upon submission of positive information substantiating the need for a review. Interested parties may request the Secretary to examine: (1) whether the continued imposition of the countervailing duty is necessary to offset the subsidization; and/or (2) whether the injury will likely continue or recur if the countervailing duty is removed or modified.

"If the Commission determines that the countervailing duty is no longer necessary or warranted, the Secretary shall, upon its recommendation, immediately issue a department order terminating the imposition of the countervailing duty and shall notify all parties concerned, including the Commissioner of Customs through the Secretary of Finance, of such termination.

"Notwithstanding the provisions of the preceding paragraphs of this subsection, any countervailing duty shall be terminated on a date not later than five (5) years from the date of its imposition (or from the date of the most recent review if that review has covered both subsidization and material injury), unless the Commission has determined, in a review initiated at least six (6) months prior to the termination date upon the direction of the Secretary or upon a duly substantiated request by or on behalf of the domestic industry, that the termination of the countervailing duty will likely lead to the continuation or recurrence of the subsidization and material injury.

"The procedure and evidence governing the disposition of the petition for the imposition of countervailing duty shall equally apply to any review carried out under this subsection. Such review shall be carried out expeditiously and shall be concluded not later than ninety (90) days from the date of the initiation of such a review.

"(Q) *Judicial Review*. - Any interested party who is adversely affected by the department order of the Secretary on the imposition of the countervailing duty may file with the Court of Tax Appeals a petition for review of such order within thirty (30) days from his receipt of notice thereof: *Provided, however*, That the filing of such petition for review shall not in any way stop, suspend or otherwise toll the imposition and collection of the countervailing duty on the imported product, commodity or article.

"The petition for review shall comply with the same requirements, follow the same rules of procedure, and be subject to the same disposition as in appeals in connection with adverse rulings on tax matters to the Court of Tax Appeals.

"(R) *Definition of Terms*. - For purposes of this subsection, the term:

"(1) 'Domestic industry' shall refer to the domestic producers as a whole of the like product, commodity or article or to those of them whose collective output of the product, commodity or article constitutes a major proportion of the total domestic production of those products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term 'domestic industry' may be interpreted as referring to the rest of the producers. In case the market in the Philippines is divided into two or more competitive markets, the term 'domestic industry' shall refer to the producers within each market although their production does not constitute a significant portion of the total domestic industry: *Provided*, That there is a concentration of subsidized imports into such a separate market: and *Provided, further*, That the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

"(2) Interested parties' shall include:

"(a) An exporter or foreign producer or the importer of a product subject to investigation, or the government of the exporting country or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

"(b) A producer of the like product in the Philippines or a trade and business association a majority of the members of which produce the like product in the Philippines; and

"(c) Labor unions that are representative of the industry or coalitions of producers and/or labor unions.

"(3) 'Like product' shall mean a product, commodity or article which is identical, i.e., alike in all respects to the product, commodity or article or in the absence of such product, commodity or article, another product, commodity or article which, although not alike in all respects, has characteristics closely resembling those of the imported product, commodity or article under consideration.

"(S) An inter-agency committee composed of the Secretaries of Trade and Industry, Agriculture, and Finance, the Chairman of the Tariff Commission, and the Commissioner of Customs shall promulgate all rules and regulations necessary for the effective implementation of this section."

SEC. 2. *Administrative Support.* - Upon the effectivity of this Act, the Departments of Trade and Industry and Agriculture and the Tariff Commission shall ensure the efficient and effective implementation of the provisions of this Act by creating a special unit within each agency that will undertake the functions relative to the disposition of countervailing cases.

All countervailing duties collected shall be earmarked for the strengthening of the capability of the Departments of Trade and Industry and Agriculture and the Tariff Commission to undertake their responsibilities under this Act.

Additional funding shall come from fees and charges which the aforementioned government agencies are authorized to collect under this Act.

SEC. 3. *Separability Clause.* - If any of the provisions of this Act is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in force and effect.

SEC. 4. *Repealing Clause.* - All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

SEC. 5. *Effectivity Clause.* - This Act shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

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