

ELEVENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'98 AUG 25 A8:54

SENATE

RECEIVED BY:

Submitted by the Committees on Ways and Means, and Constitutional Amendments, Revision of Codes and Laws on 25 AUG 1998

Re : S. No. 763
Recommending its approval with amendments

Sponsors : Senators Enrile and Roco

Mr. President:

The Committees on Ways and Means, and Constitutional Amendments, Revision of Codes and Laws to which was referred S. No. 763, introduced by Senator Enrile, entitled:

AN ACT
PROVIDING THE RULES FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK 1 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED BY REPUBLIC ACT NO. 7843, AND FOR OTHER PURPOSES

have considered the same and have the honor to report it back to the Senate with the recommendation that the S. No. 763 be approved with the following amendments:

1. On page 12, line 1, replace "PHILIPPINES" with the phrase "EXPORTING COUNTRY OR THE COUNTRY OF ORIGIN";
2. On page 13, line 4, between the words "COUNTRIES" and "ORIGIN", replace the word "OR" with "OF";
3. On the same page, lines 4 and 5, delete the phrase "IN QUESTION";
4. On page 17, after line 7 and before the paragraph starting with the word "IN" on line 8, insert the following paragraphs:

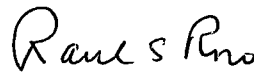
"THE COMMISSION IS HEREBY AUTHORIZED TO REQUIRE ANY INTERESTED PARTY TO ALLOW ACCESS TO, OR OTHERWISE PROVIDE, NECESSARY INFORMATION TO ENABLE THE COMMISSION TO EXPEDITE THE INVESTIGATION.

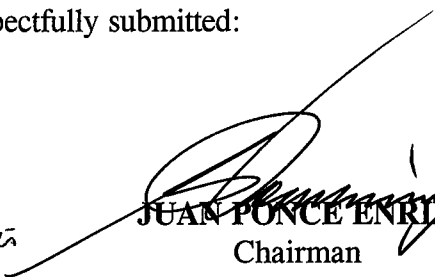
"IN CASES IN WHICH ANY INTERESTED PARTY REFUSES TO ACCESS TO, OR OTHERWISE DOES NOT PROVIDE, NECESSARY INFORMATION WITHIN A REASONABLE PERIOD OF TIME OR SIGNIFICANTLY IMPEDES THE INVESTIGATION, PRELIMINARY AND FINAL DETERMINATIONS, AFFIRMATIVE OR NEGATIVE, MAY BE MADE ON THE BASIS OF THE FACTS AVAILABLE."; and,

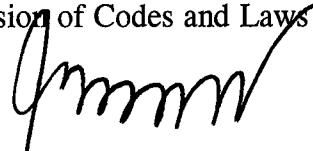
5. On page 20, after line 4 and before paragraph "K. IMPOSITION OF AN ANTI-DUMPING DUTY", insert a paragraph to read as follows:

"THE COMMISSION 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 WHETHER TO APPLY DEFINITIVE MEASURES. SUCH DISCLOSURE SHOULD TAKE PLACE IN SUFFICIENT TIME FOR THE PARTIES TO DEFEND THEIR INTERESTS."

Respectfully submitted:


RAUL S. ROCO
Chairman *of amendments*
Constitutional Amendments,
Revision of Codes and Laws

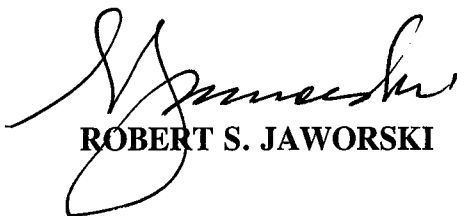

JUAN PONCE ENRILE
Chairman
Ways and Means


GREGORIO B. HONASAN
Vice-Chairman
Ways and Means, and
Constitutional Amendments,
Revision of Codes and Laws

JOHN H. OSMEÑA
Vice-Chairman
Ways and Means

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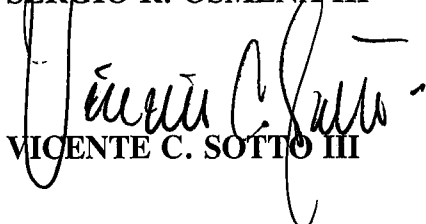
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FRANKLIN M. DRILON
Majority Leader

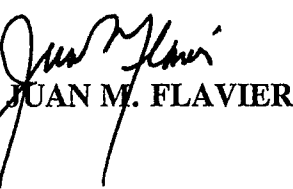
TEOFISTO T. GUINGONA, JR.
Minority Leader

The Honorable
MARCELO B. FERNAN
President of the Senate
Senate of the Philippines
Pasay City

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RAMON B. REVILLA

EX-OFFICIO MEMBERS



BLAS F. OPLE

President Pro-Tempore



FRANKLIN M. DRILON

Majority Leader



TEOFISTO T. GUINGONA, JR.

Minority Leader

*w/ reservations
and amendments*

The Honorable
MARCELO B. FERNAN
President of the Senate
Senate of the Philippines
Pasay City

ELEVENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'98 JUL -9 P1:32

SENATE

RECEIVED BY:

S. No. 763

Introduced by Senator Juan Ponce Enrile

EXPLANATORY NOTE

The GATT-Uruguay Round which was ratified by the Senate of December 14, 1994 provides mechanisms to counteract trade restrictive practices, like anti-dumping, serves as a guidepost in the enactment of domestic laws. This practical interpolation of the GATT-UR agreements stem from the divergence of the domestic conditions of its member nations politically, geographically and economically. Treatment of anti-dumping case in the European Union varies from the treatment it receives from Indonesia, much less from the Philippines, in terms of rendering protection to their respective domestic industries. Otherwise stated, the GATT-UR Agreement on Anti-dumping must be localized.

Immediately after the ratification of the GATT-UR Agreement, the first related law enacted was Republic Act No. 7843 or the Anti-dumping Act of 1994. The law, then and now, may be considered as a safety net against the inflow of cheap imported goods expected to flood the market starting January 1, 1995, the year the Philippines became a member of the World Trade Organization, as an offshoot of the Senate ratification of the GATT-UR.

Although the basis of the enactment of R.A. NO. 7843 was the GATT-UR Agreement on Anti-Dumping, "the spirit of the law" to protect local industries was stretched. As a result, R.A. No. 7843 provisions were more restrictive than the GATT. Since the law is so complicated and almost impractical to apply, the intent to protect domestic industry is defeated.

The bill amends R.A. No. 7843, by removing its restrictive provisions and by adopting a workable anti-dumping mechanism in order to attain the following: (a) conformity with the GATT-UR Agreement on Anti-dumping, avoiding unnecessary restrictive provisions; (b) establishing common legal provisions like prescriptive periods that would also be applicable to other GATT-UR agreements like countervailing measures and safeguard measure; and (c) transforming the law into a more workable and simple piece of legislation.

With this in mind, the bill adopts a workable anti-dumping mechanism suitable to local conditions and at the same time substantially complying with the GATT-UR Agreement on anti-dumping.

Approval of this bill is earnestly sought.


JUAN PONCE ENRILE

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SENATE

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S. No. 763

Introduced by Senator Juan Ponce Enrile

AN ACT

PROVIDING THE RULES FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK 1 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED BY REPUBLIC ACT NO. 7843, AND FOR OTHER PURPOSES

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

SECTION 1. Section 301, Part 2, Title II, Book I of the Tariff and Customs Code, as amended by Republic Act No. 7843, is hereby further amended to read as follows:

“SEC. 301. Dumping Duty. -

“[a. Whenever the Secretary of Finance or the Secretary of Trade and Industry (hereinafter called the “Secretary”) received an anti-dumping petition from the domestic industry or the Secretary has reason to believe, from any invoice or other document or newspaper, magazine or information or translation thereof by any reputable language translator made available by any government agency or interested party, that a specific kind or class of foreign article, is being imported into, or sold or is likely to be sold in the Philippines, at a price less than its normal value, the importation or sale of which might injure, retard the establishment of, or is likely to injure an industry producing like articles in the Philippines, the Secretary shall, within twenty (20) days from receipt of such petition or information, determine a *prima facie* case of dumping. Within five (5) days from such receipt, he shall notify the protestee-importer and require him to submit within ten (10) days from such notice evidence from the producer of the

imported article duly authenticated by the Philippine consular or trade office to support the normal value of such product. If no such evidence is submitted within the prescribed period, the Secretary shall base his decision on the available pertinent data.

“Pending determination of a *prima facie* case of dumping, the petitioner may petition that the release from the Bureau of Customs of the alleged dumped product be withheld. If the Secretary determines that on the face of the petition and documents presented, there exists an imminent danger of injury to a particular industry as a result of the alleged dumping, he shall direct the Commissioner of Customs to hold the release of the questioned importation, upon filing by the petitioner of a bond equal to the alleged margin of dumping. The bond shall answer for damages which the importer may suffer as a result of the holding of the release of the questioned importation, in case the Secretary finds that there is no *prima facie* case. However, the petitioner’s liability for damages shall not exceed the amount of his bond. This bond shall be canceled once a *prima facie* case has been determined by the Secretary. The Secretary may, *motu proprio*, hold the release of the questioned articles based on his information that an imminent danger of injury exists to a particular industry as a result of the alleged dumping.

“The Secretary upon the determination of a *prima facie* case of dumping shall so advise the Tariff Commission (hereinafter called the “Commission”) and shall instruct the Commissioner of Customs to hold the release of the goods or articles in question, unless the protestee/importer shall have filed a cash bond of not less than the provisionally estimated dumping duty plus the applicable regular duty based on the documentary evidence submitted with the dumping protest to answer for the payment of such duties, fees and charges if a dumping case is established. If the protest is dismissed, the cash bond shall be returned to the importer within ten (10) days from the finality of the order.

"The Secretary shall have the discretion to exclude related parties from the domestic industry. A producer and an exporter or importer are related if the producer directly or indirectly controls the producer; a third party and there is a reason to believe that the relationship causes the producer to act differently than an unrelated producer would act.

"b. The Commission, upon receipt of the advice from the Secretary shall conduct an investigation to:

"1. 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;

"The normal value of an article shall be the comparable price in the ordinary course of trade for the like articles when destined for domestic consumption in the exporting country which for purposes of this section means the country of production or manufacture.

"If the normal value of an article cannot be determined, the following rules shall apply:

"If the like article is not being sold in the ordinary course of trade in the domestic market of the exporting country or if the sale does not allow a fair comparison or if the normal value is not available or unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party or the agency providing the normal value is state-controlled or jointly owned by the state or the exporting country, or where products are not imported directly from the country of production then, the normal value shall be based on the higher of values determined from any of the following methods, such as but not limited to, the normal value of like articles in a proxy country at the same stage of development of the industry producing like products, or the cost of production in the country of production or manufacture or on the estimated landed cost in the country of production or manufacture which is based on C and F price

of such articles including duties, surcharges, and taxes when imported by an importer in the country of production.

“2. Ascertain the difference, if any, between the export price and the normal value of the article.

“3. Determine if, as a result thereof, a domestic industry producing like articles in the Philippines suffers, or will be threatened with, injury, or will suffer a material retardation of the establishment of a domestic industry in the Philippines: *Provided*, That in determining whether the domestic industry has suffered or is being threatened with injury, the Commission shall determine whether the wholesale prices at which the domestic articles are sold are reasonable, taking into account the cost of raw materials, labor, overhead, a fair return on investment and the overall efficiency of the industry; and/or whether a further importation of such articles and/or like articles are clearly foreseen and imminent considering such relevant factors as:

“(a) Rate of increase of importation of such article: *Provided*, That in the determination of potential injury, there should be at least three percent (3%) increase in the volume of importation of such articles being dumped relative to the average monthly volume of importation of such like articles for the immediately preceding three (3) months; or

“(b) Reasonable likelihood of increased importations; or

“(c) Freely disposable or increased capacity of the exporter of such imported articles; or

“(d) Import prices which will have a significant depressing or suppressing effect on domestic prices: *Provided, further*, That in determining whether a domestic industry that will produce like articles is being retarded in its establishment, there must be evidence of the forthcoming commercial operation of the industry: *Provided, finally*, That in determining injury, the following shall also be considered:

"i. Whether or not the imported articles under consideration are identical or alike in all respect to articles produced by the domestic industry or substantially of the same material or although of different composition or material serves the same or similar purpose such as substitute as the articles produced in the Philippines in quantities sufficient to supply at least ten percent (10%) of local consumption (arrived at by taking the sum of the average local production and average importation and subtracting therefrom average exportation) for the immediately preceding three (3) months prior to the filing of the dumping protest;

"ii. The volume of dumped imports and their effects on prices in the domestic market for like articles: *Provided*, That the Commission shall determine the consequent impact of these imports on domestic producers by considering relevant economic factors and indices such as:

"(a) Five percent (5%) decline in sales volume or decline in sales price of at least two percent (2%) as compared to the average monthly sales for the immediately preceding three (3) months; or

"(b) Five percent (5%) decline in the volume of production as compared to the average monthly volume of production for the immediately preceding three (3) months; or

"(c) Actual and potential negative effects on employment and inventories of the subject articles.

"Within five (5) days from receipt of the advice from the Secretary of Finance, the Commission shall identify all parties concerned and require them to submit their respective memoranda within fifteen (15) days from notice.

"C. The Commission shall terminate its investigation within ninety (90) days from receipt of the aforesaid advice and shall submit its findings to the Special Committee on Anti-Dumping (hereinafter referred to as "Special Committee") within sixty (60) days from the termination of its investigation:

Provided, That the Commission shall give notice to interested parties of such findings submitted to the special committee.

"In case any or all of the parties on record fail to submit their respective memoranda within the period prescribed above, the Commission shall base its findings on the best available evidence.

"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 accounts for less than three percent (3%) of the average monthly imports of the like articles in the Philippines unless countries which individually account for less than three percent (3%) of the average monthly imports of the like articles in the Philippines collectively account for more than seven percent (7%) of total average monthly imports of that article.

"D. The Special Committee shall, within fifteen (15) days after receipt of the report of the Commission, decide whether the article in question is being imported in violation of this section and shall give due notice of such decision. In case the decision of dumping is in the affirmative, the special committee shall direct the Commissioner of Customs to cause the dumping duty, to be levied, collected and paid, as prescribed in this section, in addition to any other duties, taxes and charges imposed by law on such article, and on the articles of the same specific kind or class subsequently imported under similar circumstances coming from the specific country.

"In the event that the Special Committee fails to decide within the period prescribed herein, the recommendation of the Commission shall be deemed approved and shall be final and executory.

"E. The 'dumping duty' as provided for in sub-section D hereof shall be equal to the difference between the actual export price and the normal value of the article as determined in the dumping decision. All importations of like

articles within one hundred fifty (150) days immediately preceding the filing protest are covered by the investigation. However, in cases of subsequent importations of same kind or class of article from the specific country named in the protest, the dumping duty shall be equal to the difference between the actual export price and the normal value actually existing at the time of importation as determined by the Commission from the supporting documents submitted or from other reliable sources.

“F. Pending investigation and final decision of the case, the article in question, and articles of the same specific kind or class subsequently imported under similar circumstances, shall be released to the owner, importer, consignee or agent upon the giving of a case bond in an amount not less than the provisionally estimated difference between the actual export price and the normal value including the applicable regular duty prescribed in paragraph “a” above.

“G. For purposes of this section, the parties concerned including the protestant, domestic producers/manufacturers, importers and the protestee shall be afforded with the Commission and the Secretary and avail of any technical information and the data necessary to sustain its case.

“H. Any interested party of record who is dissatisfied with a decision in a dumping protest may file a motion for reconsideration with the Special Committee within thirty (30) days from notice of such decision: *Provided*, That no motion for extension of time to file a motion of reconsideration under this sub-section shall be allowed.

“I. Any aggrieved party may appeal only the amount of the dumping to the Court of Tax Appeals in the same manner and within the same period as provided for by law in the case of appeal from decision of the Commissioner of Customs. The findings of fact in a dumping case shall be final and conclusive.

“J. (1) The article, if it has not been previously released under cash bonds as provided for in sub-section ‘F’ hereof, shall be released after payment by

the party concerned of the corresponding dumping duty in addition to any ordinary duties, taxes, and charges, if any, or reexported by the owner, importer, consignee or agent, at his option and expense, upon the filing of a such cash bond in an amount not less than the provisionally estimated difference between the actual export price and the normal value plus the applicable regular duty conditioned upon presentation of landing certificate issued by a consular officer of the Philippines at the country of destination: or

(2) If the article has been previously released under cash bond, as provided in sub-section 'F' hereof, the party concerned shall be required to pay the corresponding dumping duty in addition to any ordinary duties, taxes, and charges, if any.

"K. Any investigation to be conducted by the Commission under this section shall include a public hearing or hearings where the owner, importer, consignee or agent, of the imported article, the local producers or manufacturers of a like article, other parties directly affected, and such other parties as the judgment of the Commission are entitled to appear, shall be given an opportunity to be heard and to present evidence bearing on the subject matter.

"L. The established dumping duty shall be subject to adjustment based on whichever is higher of the prevailing normal values as defined in paragraph b-1. The commission shall conduct quarterly examination and/or verification of the normal value to determine the necessity of adjustment. Should the Special Committee, upon receipt of the report of the Commission, find that there is a need for an adjustment after a public hearing it shall advise the Commissioner of Customs so that he may effect the necessary adjustment in dumping duty.

"The Philippine Finance Attaché or, in the absence thereof, the Commercial Attaché or, Trade Attaché or in the absence thereof, the diplomatic officer or consular officer aboard shall be advised by the Special Committee of any article covered by dumping decision. The concerned Attaché or the Officer

shall submit quarterly report on normal values of said articles to the Special Committee.

“M. Whenever the Commission, on its own motion or upon application of any interested party, finds after a public hearing that any of the conditions which necessitated the imposition of the dumping duties has ceased to exist, it shall submit the necessary recommendation to the Special Committee for the discontinuance or modification of such dumping duty and shall so advise the Commissioner of Customs. Any decision or order made under this section by the Special Committee shall be published in the *Official Gazette* and/or in a newspaper of general circulation.

“N. Any dumping decision promulgated by the Special Committee shall be effective for a period of five (5) years from the time of its promulgation except upon the representation of the interested party of the necessity to continue the implementation of said decision, in which case the Special Committee shall advise the Commission to conduct an investigation to determine whether any of the conditions in paragraphs b-1 and b-3 still exists. The action for extension shall be brought before the Special Committee at least six (6) months before the expiration of the period.

“The findings of the Commission shall be submitted to the special committee at least three (3) months before the expiration of the period but in no case shall it exceed one (1) month after receipt of the advice from the Special Committee.

“The period of extension shall, in no case, exceed twenty-four (24) months or two (2) years.

“O. For the purpose of this section, the term:

“1. “Comparable price” shall mean the domestic price in the exporting country at the same level of trade which is sold or offered for sale at wholesale on the date of exportation to the Philippines;

"2. "Cost of production" of an imported article shall be the sum of:

(a) The cost of materials of, and of fabrication, manipulation or other process employed in manufacturing or producing, like articles, at a time preceding the date of shipment of the particular article under consideration which would ordinarily permit the manufacture or production of the particular article under consideration in the usual course of business;

"(b) The actual administrative, selling and general expenses at least ten percent (10%) of production costs incurred by the exporter or producer of articles and/or like articles;

"(c) The cost of all containers and coverings, and all other costs, charges and expenses incident to placing the particular article under consideration in condition, packed ready for shipment to the Philippines but not less than one percent (1%) of production costs; and

"(d) A reasonable amount for profit not less than eight percent (8%) of the sum of the amounts referred to in the preceding sub-paragraphs a, b, and c.

"3. "Domestic industry" shall refer to the domestic producers of like articles as a whole or to those whose collective output of the products constitute a significant share of the total domestic production of those products in the industries concerned. Except, when producers are related to the exporters or importers, the term "domestic industry" may be interpreted as referring to the rest of the producers;

"4. "Export price" of an imported article shall be the price at which such article has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the article is imported, plus, when not included in such price;

"(a) The case of all containers and covering and all other costs, charges and expenses incident to placing the article in condition, packed ready for shipment to the Philippines;

“(b) The amount of any import duties imposed by the country of exportation which have not been collected, by reason or the exportation of the articles to the Philippines; and

“(c). The amount of any taxes imposed in the country of exportation upon the manufacturer, producer or seller, in respect to the manufacture, production or sale of the article which have been rebated, or which have not been collected by reasons of the exportation of the articles to the Philippines.

“Any additional costs, charges and expenses incident to bringing the article from the place of shipment in the country of exportation to the place of delivery in the Philippines, and Philippine customs duties’ imposed thereon shall not be included.

“5. “Like article” shall mean a product which is identical or alike in all respect to the article under consideration or one substantially of the same material or although of different composition or material serves the same or similar purpose, such as a substitute, as the articles produced in the Philippines;

“6. A special committee on anti-dumping is hereby created to decide whether the article in question is being imported in violation of this Act, and shall be composed of three(3) members: The Secretary of Finance, as chairman; the Secretary of Trade and Industry; and either the Secretary of Agriculture, if the article in question is an agricultural product; or the Secretary of Labor, if the article is a non-agricultural product.

“P. The Secretary of Finance in consultation with the special committee on anti-dumping and the Commission shall promulgate all rules and regulations necessary to carry out their respective functions under this section.]”

A. WHENEVER ANY PRODUCT, COMMODITY OR ARTICLE OF COMMERCE IS IMPORTED INTO THE COUNTRY AT LESS THAN ITS NORMAL VALUE IN THE ORDINARY COURSE OF TRADE, FOR THE LIKE PRODUCT, COMMODITY OR ARTICLE DESTINED FOR

CONSUMPTION IN THE PHILIPPINES, AND IS CAUSING OR IS THREATENING TO CAUSE MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR MATERIALLY RETARDING THE ESTABLISHMENT OF SUCH AN INDUSTRY PRODUCING LIKE PRODUCTS AS DETERMINED BY THE SECRETARY OF TRADE AND INDUSTRY, IN THE CASE OF NON-AGRICULTURAL PRODUCT, COMMODITY OR ARTICLE; OR BY 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) AFTER FORMAL INVESTIGATION AND AFFIRMATIVE FINDING OF THE TARIFF COMMISSION (HEREINAFTER REFERRED TO AS "THE COMMISSION") TO HAVE CAUSED OR THREATENS A MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR MATERIALLY RETARDS THE ESTABLISHMENT OF SUCH A DOMESTIC INDUSTRY PRODUCING LIKE PRODUCTS, A DUMPING DUTY SHALL BE LEVIED AND COLLECTED ON SUCH PRODUCT, COMMODITY OR ARTICLE THEREAFTER IMPORTED TO THE PHILIPPINES UNDER SIMILAR CIRCUMSTANCES, IN ADDITION TO ORDINARY DUTIES, TAXES AND CHARGES IMPOSED BY LAW ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

B. INITIATION OF ACTION. - AN ANTI-DUMPING INVESTIGATION SHALL BE INITIATED BY ANY PERSON WHETHER NATURAL OR JURIDICAL UPON FILING A VERIFIED PETITION WHICH SHALL BE ACCOMPANIED BY DOCUMENTS CONTAINING INFORMATION SUPPORTING THE FACTS THAT ARE ESSENTIAL TO ESTABLISH THE PRESENCE OF THE ELEMENTS REQUIRED FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AND SHALL FURTHER STATE, AMONG OTHERS: 1) THE IDENTITY OF THE APPLICANT AND

A DESCRIPTION OF THE VOLUME AND THE VALUE OF THE DOMESTIC PRODUCT OR THE LIKE PRODUCT OF THE APPLICANT; 2) A COMPLETE DESCRIPTION OF THE ALLEGED DUMPED PRODUCT, THE NAMES OF THE COUNTRY OR COUNTRIES OR ORIGIN OR EXPORT IN QUESTION, THE IDENTITY OF EACH KNOWN EXPORTER OR FOREIGN PRODUCER AND A LIST OF KNOWN PERSONS SUPPORTING THE PRODUCT IN QUESTION; 3) INFORMATION ON THE NORMAL VALUE OF THE PRODUCT IN QUESTION IN THE COUNTRY OR COUNTRIES OF ORIGIN OR EXPORT; 4) INFORMATION ON THE EVALUATION OF THE VOLUME OF THE ALLEGED DUMPED IMPORTS, THE EFFECT OF THESE IMPORTS ON PRICES OF LIKE PRODUCT IN THE DOMESTIC MARKET AND THE CONSEQUENT IMPACT OF THE IMPORTS ON THE DOMESTIC INDUSTRY.


THE APPLICATION 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 50 PER CENT 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, NO INVESTIGATION SHALL BE INITIATED WHEN DOMESTIC PRODUCERS EXPRESSLY SUPPORTING THE APPLICATION ACCOUNT FOR LESS THAN 25 PER CENT OF TOTAL PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THE DOMESTIC INDUSTRY.

IF, IN SPECIAL CIRCUMSTANCES, THE AUTHORITIES CONCERNED DECIDE TO INITIATE AN INVESTIGATION WITHOUT HAVING RECEIVED A WRITTEN APPLICATION BY OR ON BEHALF OF A DOMESTIC INDUSTRY FOR THE INITIATION OF SUCH

INVESTIGATION, THEY SHALL PROCEED ONLY IF THEY HAVE SUFFICIENT EVIDENCE OF DUMPING, INJURY AND A CAUSAL LINK, TO JUSTIFY THE INITIATION OF AN INVESTIGATION.

C. NOTICE TO EXPORTING MEMBER-COUNTRY. - THE SECRETARY SHALL AVOID, UNLESS A DECISION HAS BEEN MADE TO INITIATE AN INVESTIGATION, ANY PUBLICIZING OF THE APPLICATION FOR THE INITIATION OF THE INVESTIGATION. HOWEVER, AFTER RECEIPT OF A PROPERLY DOCUMENTED APPLICATION AND BEFORE PROCEEDING TO INITIATE AN INVESTIGATION, THE SECRETARY SHALL NOTIFY THE GOVERNMENT OF THE EXPORTING MEMBER ABOUT THE IMPENDING ANTI-DUMPING INVESTIGATION.

D. NOTICE TO THE SECRETARY OF FINANCE. - UPON RECEIPT OF THE PETITION, THE SECRETARY SHALL, WITHOUT DELAY, NOTIFY THE SECRETARY OF FINANCE AND FURNISH HIM WITH A COMPLETE COPY OF THE PETITION, INCLUDING ITS ANNEXES, IF ANY, AND THE LATTER SHALL IMMEDIATELY INFORM THE COMMISSIONER OF CUSTOMS REGARDING THE FILING AND PENDENCY OF THE PETITION. THE COMMISSIONER OF CUSTOMS SHALL FORTHWITH ISSUE AN ORDER REQUIRING THE IMPOSITION OF A CASH BOND EQUAL TO THE AMOUNT OF DUMPING PROVISIONALLY ESTIMATED ON ALL PENDING IMPORTATIONS; AND FOR HIM TO GATHER, HOLD AND SECURE ALL IMPORT ENTRIES COVERING SUCH PRODUCT, COMMODITY OR ARTICLE WITHOUT LIQUIDATION; AND TO SUBMIT TO THE SECRETARY THROUGH THE SECRETARY OF FINANCE, AND TO MAKE SUCH SIMILAR ADDITIONAL REPORTS EVERY TEN (10) DAYS THEREAFTER.



E. NOTICE TO AND ANSWER OF THE IMPORTER. - WITHIN FIVE (5) DAYS FROM HIS RECEIPT OF THE PETITION, THE SECRETARY SHALL NOTIFY THE IMPORTER AND SHALL FURNISH HIM WITH A COPY OF THE PETITION AND ITS ANNEXES, IF ANY, EITHER BY PERSONAL DELIVERY OR BY REGISTERED MAIL, WHICHEVER IS MORE CONVENIENT AND EXPEDITIOUS.

THE IMPORTER SHALL, NOT LATER THAN TEN (10) DAYS FROM HIS RECEIPT OF THE NOTICE, SUBMIT HIS ANSWER, INCLUDING SUCH RELEVANT EVIDENCE OR INFORMATION AS ARE REASONABLY AVAILABLE TO HIM TO CONTROVERT THE ALLEGATIONS OF THE PETITION, EITHER BY PERSONAL DELIVERY OR BY REGISTERED MAIL. IF THE IMPORTER FAILS TO SUBMIT HIS ANSWER, HE SHALL BE DECLARED IN DEFAULT, IN WHICH CASE, THE SECRETARY SHALL MAKE SUCH PRELIMINARY DETERMINATION OF THE CASE ON THE BASIS OF THE FACTS ALLEGED IN THE PETITION AND THE SUPPORTING INFORMATION AND DOCUMENTS SUPPLIED BY THE PETITIONER.

F. PRELIMINARY DETERMINATION. - NOT LATER THAN TEN (10) DAYS FROM HIS RECEIPT OF THE ANSWER OF THE RESPONDENT IMPORTER, THE SECRETARY SHALL, ON THE BASIS OF THE PETITION OF THE AGGRIEVED PARTY AND THE ANSWER OF THE RESPONDENT IMPORTER AND THEIR RESPECTIVE SUPPORTING DOCUMENTS OR INFORMATION, MAKE A PRELIMINARY DETERMINATION WHETHER OR NOT A *PRIMA FACIE* CASE EXISTS FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

UPON DETERMINATION BY THE SECRETARY OF THE EXISTENCE OF A *PRIMA FACIE* CASE, HE SHALL, WITHOUT DELAY,

SECURE A WRITTEN SUPPORT FOR THE INITIATION OF THE FORMAL ANTI-DUMPING INVESTIGATION FROM THE AFFECTED DOMESTIC INDUSTRY PRODUCING TWENTY-FIVE PERCENT (25%) OR MORE OF LIKE PRODUCTS, TRANSMIT THE RECORDS OF THE CASE CONSISTING OF THE PETITION, THE ANSWER AND THE WRITTEN SUPPORT OF THE DOMESTIC INDUSTRY, INCLUDING ALL THE RELEVANT DOCUMENTS INFORMATION AND THE PERIODIC REPORTS OF THE COMMISSIONER OF CUSTOMS, TO THE COMMISSION FOR ITS IMMEDIATE FORMAL INVESTIGATION OF THE CASE. THE SECRETARY SHALL, IN ADDITION, IMMEDIATELY ISSUE, THROUGH THE SECRETARY OF FINANCE, A WRITTEN INSTRUCTION TO THE COMMISSIONER OF CUSTOMS AUTHORIZING THE RELEASE OF THE PRODUCT, COMMODITY OR ARTICLE UPON THE PAYMENT OF THE CORRESPONDING ORDINARY DUTIES, TAXES AND OTHER CHARGES IMPOSED BY THE LAW ON SUCH PRODUCT, COMMODITY OR ARTICLE AND ALSO UPON POSTING OF A CASH BOND EQUAL TO THE PROVISIONALLY ESTIMATED MARGIN OF DUMPING. THE CASH BOND SHALL BE DEPOSITED WITH THE GOVERNMENT DEPOSITORY BANK AND SHALL BE HELD IN TRUST FOR THE RESPONDENT IMPORTER.

IF NO *PRIMA FACIE* CASE EXISTS, THE SECRETARY SHALL DISMISS THE PETITION WITH COST TO THE PETITIONER AND SHALL PROPERLY NOTIFY ALL THE PARTIES CONCERNED, INCLUDING THE COMMISSIONER OF CUSTOMS THROUGH THE SECRETARY OF FINANCE, REGARDING SUCH DISMISSAL.

G. INVESTIGATION OF THE COMMISSION. - IMMEDIATELY UPON ITS RECEIPT OF THE RECORDS OF THE CASE FROM THE SECRETARY, THE COMMISSION SHALL FORTHWITH SET THE CASE

FOR FORMAL INVESTIGATION AND SHALL ACCORDINGLY NOTIFY IN WRITING THE AGGRIEVED PARTY AND THE RESPONDENT IMPORTER AND, IN ADDITION, GIVE PUBLIC NOTICE OF THE EXACT INITIAL DATE, TIME AND PLACE OF THE FORMAL INVESTIGATION THROUGH THE PUBLICATION OF SUCH PARTICULARS AND A CONCISE SUMMARY OF THE PETITION IN TWO (2) NEWSPAPERS OF GENERAL CIRCULATION.

IN THE FORMAL INVESTIGATION, THE COMMISSION SHALL ESSENTIALLY DETERMINE: (1) THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE THREAT THEREOF TO DOMESTIC INDUSTRY, OR THE MATERIAL RETARDATION OF THE ESTABLISHMENT OF SUCH AN INDUSTRY PRODUCING LIKE OR DIRECTLY COMPETING PRODUCT; (2) THE EXISTENCE OF A CAUSAL RELATIONSHIP BETWEEN THE ALLEGEDLY DUMPED PRODUCT, COMMODITY OR ARTICLE AND THE MATERIAL INJURY OR THREAT OF MATERIAL INJURY TO THE AFFECTED DOMESTIC INDUSTRY, OR MATERIAL RETARDATION OF THE ESTABLISHMENT OF SUCH AN INDUSTRY; (3) THE ANTI-DUMPING DUTY TO BE IMPOSED; AND (4) THE DURATION OF THE IMPOSITION OF THE ANTI-DUMPING DUTY.

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.

THE COMMISSION SHALL COMPLETE THE FORMAL INVESTIGATION AND SUBMIT ITS REPORT TO THE SECRETARY NOT LATER THAN SIXTY (60) DAYS FROM THE DATE OF ITS RECEIPT OF THE RECORDS OF THE CASE FROM THE SECRETARY.

H. DETERMINATION OF MATERIAL INJURY OR THREAT THEREOF. - THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE PRESENCE AND DEGREE OF THE THREAT OF MATERIAL INJURY TO DOMESTIC INDUSTRY, AS A RESULT OF THE DUMPED IMPORTS SHALL BE DETERMINED BY THE COMMISSION ON THE BASIS OF POSITIVE EVIDENCE AND SHALL REQUIRE AN OBJECTIVE EXAMINATION OF (1) THE RATE AND AMOUNT OF IMPORTS, EITHER IN ABSOLUTE TERMS OR RELATIVE TO PRODUCTION OR CONSUMPTION IN THE DOMESTIC MARKET, (2) THE EFFECT OF THE DUMPED IMPORTS ON PRICES IN THE DOMESTIC MARKET FOR LIKE PRODUCT, COMMODITY OR ARTICLE, THAT IS, WHETHER THERE HAS BEEN A SIGNIFICANT PRICE UNDERCUTTING BY THE DUMPED IMPORTS AS COMPARED WITH THE PRICE OF LIKE PRODUCT, COMMODITY OR ARTICLE IN AND/OR DOMESTIC MARKET, OR WHETHER THE EFFECTS OF SUCH IMPORTS IS OTHERWISE TO DEPRESS PRICES TO A SIGNIFICANT DEGREE OR PREVENT PRICE INCREASES, WHICH OTHERWISE WOULD HAVE OCCURRED, TO A SIGNIFICANT DEGREE; AND (3) THE RESULTING EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC PRODUCERS OR THE RESULTING RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY MANUFACTURING 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 OR POTENTIAL DECLINE IN OUTPUT SALES, MARKET SHARE, PROFITS, PRODUCTIVITY, RETURN ON INVESTMENTS, OR UTILIZATION OF CAPACITY; OTHER FACTORS AFFECTING DOMESTIC PRICES; THE MAGNITUDE OF DUMPING;

ACTUAL AND POTENTIAL NEGATIVE EFFECTS ON CASH FLOW, INVENTORIES, EMPLOYMENT, WAGES, GROWTH, AND ABILITY TO RAISE CAPITAL OR INVESTMENTS.

I. VOLUNTARY PRICE UNDERTAKINGS. - ANTI-DUMPING INVESTIGATIONS MAY BE SUSPENDED OR TERMINATED WITHOUT THE IMPOSITION OF PROVISIONAL MEASURES OR ANTI-DUMPING DUTIES UPON RECEIPT OF THE SECRETARY OF A SATISFACTORY VOLUNTARY PRICE UNDERTAKING EXECUTED BY THE EXPORTER UNDER OATH THAT IT HAS REVISED OR INCREASED ITS PRICES; OR HAS CEASED EXPORTS TO THE PHILIPPINES AT DUMPED PRICES, THEREBY ELIMINATING THE MATERIAL INJURY TO THE DOMESTIC INDUSTRY PRODUCING LIKE PRODUCTS. PRICE INCREASES UNDER SUCH UNDERTAKINGS SHALL NOT BE HIGHER THAN NECESSARY TO ELIMINATE THE MARGIN OF DUMPING.

PRICE UNDERTAKINGS FROM EXPORTERS SHALL BE ACCEPTED BY THE SECRETARY ONLY AFTER HIS DETERMINATION OF THE EXISTENCE OF A *PRIMA FACIE* CASE OF DUMPING.

J. CUMULATION OF IMPORTS. - WHEN IMPORTS OF PRODUCTS, COMMODITIES OR ARTICLES FROM MORE THAN ONE COUNTRY ARE SIMULTANEOUSLY THE SUBJECT OF AN ANTI-DUMPING INVESTIGATION, THE COMMISSION MAY CUMULATIVELY ASSESS THE EFFECTS OF SUCH IMPORTS ONLY IF THE COMMISSION IS CONVINCED THAT (1) THE MARGIN OF DUMPING 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, (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 LIKE DOMESTIC PRODUCTS, COMMODITIES AND ARTICLES.

K. IMPOSITION OF THE ANTI-DUMPING DUTY. - THE SECRETARY SHALL, WITHIN TEN (10) DAYS FROM RECEIPT OF THE FAVORABLE REPORT OF THE COMMISSION, ISSUE A DEPARTMENT ORDER IMPOSING AN ANTI-DUMPING DUTY ON THE IMPORTED PRODUCT, COMMODITY, OR ARTICLE, UNLESS HE HAS EARLIER ACCEPTED A PRICE UNDERTAKING FROM THE EXPORTER.

IN CASE OF A FAVORABLE REPORT OF THE COMMISSION, THE CASH BOND IMPOSED AT THE INITIATION OF THE INVESTIGATION SHALL BE APPLIED. IF THE CASH BOND IS GREATER THAN THE IMPOSED ANTI-DUMPING DUTY, AFTER THE FORMAL INVESTIGATION, THE REMAINDER SHALL BE RETURNED TO THE IMPORTER IMMEDIATELY. IF THE CASH BOND IS NOT ENOUGH TO COVER THE ANTI-DUMPING DUTY, THE RESPONDENT IMPORTER SHALL BE IMMEDIATELY ASSESSED FOR THE DEFICIENCY AND SHALL PAY THE SAME WITHIN FIFTEEN (15) DAYS FROM THE RECEIPT OF THE DEFICIENCY ASSESSMENT.

L. COMPUTATION OF ANTI-DUMPING DUTY. - THE AMOUNT OF ANTI-DUMPING DUTY SHALL BE EQUAL TO THE DIFFERENCE BETWEEN THE NORMAL VALUE AND THE ACTUAL EXPORT PRICE OF THE IMPORTED PRODUCT, COMMODITY OR ARTICLE ON THE BASIS OF THE APPLICABLE PROVISION OF THIS CODE ON ASSESSMENT OF DUTY. THE COMMISSIONER OF CUSTOMS SHALL SUBMIT TO THE SECRETARY, THROUGH THE SECRETARY OF

FINANCE, HIS ORDER ON THE IMPOSITION OF CASH BONDS AND A CERTIFIED COMPUTATION OF EACH CASE OF ANTI-DUMPING DUTY.

M. DURATION AND REVIEW OF THE ANTI-DUMPING DUTY. - AS A GENERAL RULE, THE IMPOSITION OF AN ANTI-DUMPING DUTY SHALL REMAIN IN FORCE ONLY AS LONG AND TO THE EXTENT NECESSARY TO COUNTERACT DUMPING WHICH IS CAUSING OR THREATENING TO CAUSE MATERIAL INJURY TO DOMESTIC INDUSTRY, OR MATERIAL RETARDATION OF THE ESTABLISHMENT OF SUCH INDUSTRY.

HOWEVER, THE NEED FOR THE CONTINUED IMPOSITION OF THE ANTI-DUMPING DUTY MAY BE REVIEWED BY THE COMMISSION UPON THE DIRECTION OF THE SECRETARY, TAKING INTO CONSIDERATION THE NEED TO PROTECT EXISTING OR SOON TO BE ESTABLISHED DOMESTIC INDUSTRY.

ANY INTERESTED PARTY MAY ALSO PETITION THE SECRETARY FOR A REVIEW OF THE CONTINUED IMPOSITION OF THE ANTI-DUMPING DUTY; *PROVIDED*, THAT A REASONABLE PERIOD OF TIME HAS ELAPSED SINCE THE IMPOSITION OF THE ANTI-DUMPING DUTY, AND UPON THE NEED FOR A REVIEW. INTERESTED PARTIES SHALL HAVE THE RIGHT TO REQUEST THE SECRETARY TO EXAMINE (1) WHETHER THE CONTINUED IMPOSITION OF THE ANTI-DUMPING DUTY IS NECESSARY TO OFFSET THE MATERIAL INJURY OR THREAT THEREOF TO DOMESTIC INDUSTRY OR SOON TO BE ESTABLISHED INDUSTRY; AND (2) WHETHER THE INJURY WOULD LIKELY CONTINUE OR RECUR IF THE ANTI-DUMPING DUTY WERE REMOVED OR MODIFIED, OR BOTH.

IF AS A RESULT OF THE REVIEW BY THE COMMISSION, THE SECRETARY DETERMINES THAT THE ANTI-DUMPING DUTY IS NOT

LONGER NECESSARY OR WARRANTED, THE IMPOSITION OF THE ANTI-DUMPING DUTY SHALL BE TERMINATED IMMEDIATELY AND ALL PARTIES CONCERNED SHALL BE NOTIFIED ACCORDINGLY OF SUCH TERMINATION, INCLUDING AND ESPECIALLY THE COMMISSIONER OF CUSTOMS THROUGH THE SECRETARY OF FINANCE.

THE DURATION OF THE ANTI-DUMPING DUTY INCLUDING ITS PROVISIONAL MEASURES AND THE TIME EXTENSIONS SHALL NOT EXCEED FIVE (5) YEARS.

THE PROCEDURE AND EVIDENCE GOVERNING THE DISPOSITION OF THE PETITION FOR THE IMPOSITION OF THE ANTI-DUMPING DUTY SHALL APPLY WITH EQUAL MEASURE TO ANY REVIEW CARRIED OUT UNDER THIS SECTION, AND ANY SUCH REVIEW SHALL BE CARRIED OUT EXPEDITIOUSLY AND SHALL BE CONCLUDED NOT LATER THAN ONE HUNDRED FIFTY (150) DAYS FROM THE DATE OF THE INITIATION OF SUCH REVIEW.

N. JUDICIAL REVIEW. - ANY INTERESTED PARTY WHO IS ADVERSELY AFFECTED BY A FINAL RULING OF THE SECRETARY IN CONNECTION WITH THE IMPOSITION OF A DUMPING DUTY MAY FILE WITH THE COURT OF TAX APPEALS, EITHER BY PERSONAL DELIVERY [OR BY REGISTERED MAIL,] A PETITION FOR THE REVIEW OF SUCH RULING WITHIN THIRTY (30) DAYS FROM HIS RECEIPT OF NOTICE OF THE FINAL RULING OF THE SECRETARY: *PROVIDED, HOWEVER,* THAT THE FILING OF SUCH PETITION FOR REVIEW SHALL NOT IN ANY WAY STOP, SUSPEND OR OTHERWISE TOLL THE IMPOSITION OR COLLECTION, AS THE CASE MAY BE, OF THE SAFEGUARD MEASURE ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

THE PETITION FOR REVIEW SHALL COMPLY WITH THE SAME REQUIREMENTS AND SHALL FOLLOW THE SAME RULES OF PROCEDURE AND SHALL BE SUBJECT TO THE SAME DISPOSITION AS IN APPEALS IN CONNECTION WITH ADVERSE RULINGS ON TAX MATTERS TO THE COURT OF APPEALS.

SEC. 2. *Rules and Regulations.* - The Secretary of Trade and Industry in the case of non-agricultural product, commodity or article and the Secretary of Agriculture in the case of agricultural product, commodity or article shall issue all rules and regulations, that may be necessary for the effective and proper implementation of this Act.

SEC. 3. *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. 4. *Separability Clause.* - If any of the provisions of this Act is declared invalid by a competent court, the remainder of this act or any provisions not affected by such declaration of invalidity shall remain in full force and effect.

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.

Approved.