



HOUSE OF REPRESENTATIVES

H. No. 7612

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AN ACT PROVIDING THE RULES FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK I 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:

1 SECTION 1. This Act shall be known as the "Anti-Dumping Act of
2 1999."

3 SEC. 2. It is hereby declared the policy of the State to protect
4 domestic enterprises against unfair foreign competition and trade practices.
5 Towards this end, substantive and procedural remedies available to
6 domestic enterprises shall be strengthened and made responsive to recent
7 developments in world trade.

8 SEC. 3. *Definition of Terms.* – For purposes of this Act, the
9 following definitions shall apply to the terms:

10 (a) "Anti-dumping duty" refers to a special duty imposed on the
11 importation of a product, commodity or article of commerce into the
12 Philippines at less than its normal value when destined for domestic
13 consumption in the exporting country, which is the difference between the
14 export price and the normal value of such product, commodity or article.

15 (b) "Normal value" refers to a comparable price at the date of sale
16 of the like product, commodity or article in the ordinary course of trade
17 when destined for consumption in the country of export or on the export
18 price to an appropriate third country or with the cost of production in the
19 country of origin plus a reasonable amount for administrative, selling and
20 general costs and profits.

1 (c) "Domestic industry" refers to the domestic producers as a
2 whole of like products or to those whose collective output of the products
3 constitute a major proportion of the total domestic production of those
4 products, except when producers are related to the exporters or importers
5 or are themselves importers of the allegedly dumped product, the term
6 'domestic industry' may be interpreted as referring to the rest of the
7 producers.

8 (d) "Dumped import/product" refers to any product, commodity or
9 article of commerce introduced into the Philippines at less than its normal
10 value in the ordinary course of trade, for like product, commodity or article
11 destined for consumption in the exporting country, is causing or is
12 threatening to cause material injury to a domestic industry, or materially
13 retarding the establishment of a domestic industry producing like product.

14 (e) "Like product" refers to a product which is identical or alike in
15 all respect to the article under consideration, or one substantially of the
16 same material or although of a different composition or material serves the
17 same or similar purpose, as the articles produced in the Philippines.

18 (f) "Non-selected exporter" refers to an exporter or producer who
19 has not been initially chosen as among the selected exporters or producers
20 of the product under investigation, whose individual margin of dumping
21 has been determined by the authorities.

1 SEC. 4. Section 301, Part 2, Title II, Book I of the Tariff and
2 Customs Code of the Philippines, as amended, is hereby further amended
3 to read as follows:

4 "PART 2. SPECIAL DUTIES

5 "SEC. 301. *Dumping Duty.* -

6 ["A. Whenever the Secretary of Finance or the Secretary of Trade
7 and Industry (hereinafter called the 'Secretary') receives an anti-dumping
8 petition from the domestic industry or the Secretary has reason to believe,
9 from any invoice or other document or newspaper, magazine or
10 information or translation thereof by any reputable language translator
11 made available by any government agency or interested party, that a
12 specific kind or class of foreign article, is being imported into, or sold or is
13 likely to be sold in the Philippines, at a price less than its normal value, the
14 importation or sale of which might injure, or retard the establishment of, or
15 is likely to injure an industry producing like articles in the Philippines, the
16 Secretary shall, within twenty (20) days from receipt of such petition or
17 information, determine a *prima facie* case of dumping. Within five (5)
18 days from such receipt, he shall notify the protestee-importer and require
19 him to submit within ten (10) days from such notice evidence from the
20 producer of the imported article duly authenticated by the Philippine
21 consular or trade office to support the normal value of such product. If no

1 such evidence is submitted within the prescribed period, the Secretary shall
2 base his decision on the available pertinent data.

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

19 [“The Secretary upon the determination of a *prima facie* case of
20 dumping shall so advise the Tariff Commission (hereinafter called the
21 ‘Commission’) and shall instruct the Commissioner of Customs to hold the
22 release of the goods or articles in question, unless the protestee/importer

1 shall have filed a cash bond not less than the provisionally estimated
2 dumping duty plus the applicable regular duty based on the documentary
3 evidence submitted with the dumping protest, to answer for the payment of
4 such duties, fees and charges if a dumping case is established. If the
5 protest is dismissed, the cash deposit shall be returned to the importer
6 within ten (10) days from the finality of the order.

7 ["The Secretary shall have the discretion to exclude related parties
8 from the domestic industry. A producer and an exporter or importer are
9 related if the producer directly or indirectly controls either the exporter or
10 the importer; the exporter or the importer directly or indirectly controls the
11 producer; a third party directly or indirectly controls the producer and
12 exporter or importer; or the producer and the exporter or importer directly
13 or indirectly control a third party and there is reason to believe that the
14 relationship causes the producer to act differently than an unrelated
15 producer would act.

16 ["B. The Commission, upon receipt of the advice from the
17 Secretary shall conduct an investigation to:

18 ["1. Verify if the kind or class of article in question is being
19 imported into, or sold or is likely to be sold in the Philippines at a price
20 less than its normal value;

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

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

7 ["If like article is not being sold in the ordinary course of trade in
8 the domestic market of the exporting country or if the sale does not allow a
9 fair comparison or if the normal value is not available or unreliable
10 because of association or a compensatory arrangement between the
11 exporter and the importer or a third party or the agency providing the
12 normal value is state-controlled or jointly owned by the state or the
13 exporting country, or where products are not imported directly from the
14 country of production then, the normal value shall be based on the higher
15 of values determined from any of the following methods, such as but not
16 limited to, the normal value of like articles in a proxy country at the same
17 stage of development of the industry producing like products, or the cost
18 of production in the country of production or manufacture or on the
19 estimated landed cost in the country of production or manufacture which is
20 based on C and F price of such articles including duties, surcharges, and
21 taxes when imported by an importer in the country of production.

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

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

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

19 ["(b) Reasonable likelihood of increased importations; or

20 ["(c) Freely disposable or increase capacity of the exporter of such
21 imported articles; or

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

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

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

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

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

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

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

13 ["C. The Commission shall terminate its investigation within ninety
14 (90) days from receipt of the aforesaid advice and shall submit its findings
15 to the Special Committee on Anti-Dumping (hereinafter referred to as
16 'Special Committee') within sixty (60) days from the termination of its
17 investigation: *Provided*, That the Commission shall give notice to
18 interested parties of such findings submitted to the Special Committee.

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

1 ["The Commission shall *motu proprio* terminate its investigation if
2 the provisionally estimated margin of dumping is less than two percent
3 (2%) of export price or the volume of dumped imports is negligible. The
4 volume of dumped imports is considered negligible if the volume of
5 dumped imports from a particular country accounts for less than three
6 percent (3%) of the average monthly imports of the like articles in the
7 Philippines unless countries which individually account for less than three
8 percent (3%) of the average monthly imports of the like articles in the
9 Philippines collectively account for more than seven percent (7%) of total
10 average monthly imports of that article.

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

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

4 ["E. The 'dumping duty' as provided for in Subsection D hereof
5 shall be equal to the difference between the actual export price and the
6 normal value of the article as determined in the dumping decision. All
7 importations of like articles within one hundred fifty (150) days
8 immediately preceding the filing of the protest are covered by the
9 investigation. However, in cases of subsequent importations of same kind
10 or class of article from the specific country named in the protest, the
11 dumping duty shall be equal to the difference between the actual export
12 price and the normal value actually existing at the time of importation as
13 determined by the Commission from the supporting documents submitted
14 or from other reliable sources.

15 ["F. Pending investigation and final decision of the case, the article
16 in question, and articles of the same specific kind or class subsequently
17 imported under similar circumstances, shall be released to the owner,
18 importer, consignee or agent upon the giving of a cash bond in an amount
19 not less than the provisionally estimated difference between the actual
20 export price and the normal value including the applicable regular duty as
21 prescribed in paragraph (a) above.

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

6 ["H. Any interested party of record who is dissatisfied with a
7 decision in a dumping protest may file a motion for reconsideration with
8 the Special Committee within thirty (30) days from notice of such
9 decision: *Provided*, That no motion for extension of time to file a motion
10 for reconsideration under this Subsection shall be allowed.

11 ["I. Any aggrieved party may appeal only the amount of the
12 dumping duty of the Court of Tax Appeals in the same manner and within
13 the same period as provided for by law in the case of appeal from decision
14 of the Commissioner of Customs. The findings of fact in a dumping case
15 shall be final and conclusive.

16 ["J. (1) The article, if it has not been previously released under cash
17 bonds as provided for in Subsection 'F' hereof, shall be released after
18 payment by the party concerned of the corresponding dumping duty in
19 addition to any ordinary duties, taxes, and charges, if any or reexported by
20 the owner, importer, consignee or agent, at his option and expense, upon
21 the filing of a cash bond in an amount not less than the provisionally

1 estimated difference between the actual export price and the normal value
2 plus the applicable regular duty conditioned upon presentation of landing
3 certificate issued by a consular officer of the Philippines as the country of
4 destination; or

5 ["(2) If the article has been previously released under cash bond, as
6 provided in Subsection 'F' hereof, the party concerned shall be required to
7 pay the corresponding dumping duty in addition to any ordinary duties,
8 taxes, and charges, if any.

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

16 ["L. The established dumping duty shall be subject to adjustment
17 based on whichever is higher of the prevailing normal values as defined in
18 paragraph (b)-1. The Commission shall conduct quarterly examination
19 and/or verification of the normal value to determine the necessity of
20 adjustment. Should the Special Committee upon receipt of the report of
21 the Commission, find that there is a need for an adjustment after a public

1 hearing it shall advise the Commissioner of Customs so that he may effect
2 the necessary adjustment in dumping duty.

3 ["The Philippine Finance Attaché or, in the absence thereof, the
4 Commercial Attaché or, Trade Attaché or in the absence thereof the
5 diplomatic officer or consular officer abroad shall be advised by the
6 Special Committee of any article covered by dumping decision. The
7 concerned Attaché or Officer shall submit quarterly report on the normal
8 value of said article to the Special Committee.

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

18 ["N. Any dumping decision promulgated by the Special Committee
19 shall be effective for a period of five (5) years from the time of its
20 promulgation except upon the representation of the interested party of the
21 necessity to continue the implementation of said decision in which case the
22 Special Committee shall advise the Commission to conduct an

1 investigation to determine whether any of the conditions in paragraphs
2 (b)-1 and (b)-3 still exists. The action for extension shall be brought
3 before the Special Committee at least six (6) months before the expiration
4 of the period.

5 ["The findings of the Commission shall be submitted to the Special
6 Committee at least three (3) months before the expiration of the period but
7 in no case shall it exceed one (1) month after receipt of the advice from the
8 Special Committee.

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

11 ["O. For the purpose of this Section, the term:

12 ["1. 'Comparable price' shall mean the domestic price in the
13 exporting country at the same level of trade which is sold or offered for
14 sale at wholesale on the date of exportation to the Philippines;

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

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

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

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

8 [“(d) A reasonable amount for profit not less than eight percent
9 (8%) of the sum of the amounts referred to in the preceding Subparagraph
10 (a), (b), and (c).

11 [“3. ‘Domestic industry’ shall refer to the domestic producers of
12 like articles as a whole or to those whose collective output of the products
13 constitute a significant share of the total domestic production of those
14 products in the industries concerned, except, when producers are related to
15 the exporters or importers, the term ‘domestic industry’ may be interpreted
16 as referring to the rest of the producers;

17 [“4. ‘Export price’ of an imported article shall be the price at which
18 such article has been purchased or agreed to be purchased, prior to the
19 time of exportation, by the person by whom or for whose account the
20 article is imported, plus, when not included in such price:

1 [“(a) The cost of all containers and coverings and all other costs,
2 charges and expenses incident to placing the article in condition, packed
3 ready for shipment to the Philippines;

4 [“(b) The amount of any import duties imposed by the country of
5 exportation which have not been collected by reason of the exportation of
6 the article to the Philippines; and

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

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

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

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

8 [“P. The Secretary of Finance in consultation with the Special
9 Committee on anti-dumping and the Commission shall promulgate all
10 rules and regulations necessary to carry out their respective functions
11 under this section.”]

12 **A. WHENEVER ANY PRODUCT, COMMODITY OR ARTICLE OF**
13 **COMMERCE IMPORTED INTO THE PHILIPPINES AT LESS THAN ITS**
14 **NORMAL VALUE IN THE ORDINARY COURSE OF TRADE FOR THE LIKE**
15 **PRODUCT, COMMODITY OR ARTICLE DESTINED FOR CONSUMPTION IN**
16 **THE EXPORTING COUNTRY IS CAUSING OR IS THREATENING TO CAUSE**
17 **MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR MATERIALLY**
18 **RETARDING THE ESTABLISHMENT OF A DOMESTIC INDUSTRY PRODUCING**
19 **LIKE PRODUCTS AS DETERMINED BY THE SECRETARY OF TRADE AND**
20 **INDUSTRY IN THE CASE OF NON-AGRICULTURAL PRODUCT, COMMODITY**
21 **OR ARTICLE, OR THE SECRETARY OF AGRICULTURE IN THE CASE OF**
22 **AGRICULTURAL PRODUCT, COMMODITY OR ARTICLE (BOTH OF WHOM**
23 **ARE HEREINAFTER REFERRED TO AS THE SECRETARY, AS THE CASE MAY**

1 BE), AFTER FORMAL INVESTIGATION AND AFFIRMATIVE FINDING OF THE
2 TARIFF COMMISSION (HEREINAFTER REFERRED TO AS THE
3 COMMISSION), A DUMPING DUTY EQUAL TO THE MARGIN OF DUMPING
4 SHALL BE LEVIED AND COLLECTED ON SUCH PRODUCT, COMMODITY OR
5 ARTICLE AND ON LIKE PRODUCT, COMMODITY OR ARTICLE THEREAFTER
6 IMPORTED TO THE PHILIPPINES UNDER SIMILAR CIRCUMSTANCES, IN
7 ADDITION TO ORDINARY DUTIES, TAXES AND CHARGES IMPOSED BY LAW
8 ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE. HOWEVER,
9 THE DUMPING DUTY MAY BE LESS THAN THE MARGIN IF SUCH LESSER
10 DUTY WOULD BE ADEQUATE TO REMOVE THE INJURY TO THE DOMESTIC
11 INDUSTRY.

12 **B. INITIATION OF ACTION**

13 AN ANTI-DUMPING INVESTIGATION MAY BE INITIATED UPON
14 RECEIPT OF A WRITTEN APPLICATION FROM ANY PERSON WHETHER
15 NATURAL OR JURIDICAL, REPRESENTING A DOMESTIC INDUSTRY, WHICH
16 SHALL INCLUDE EVIDENCE OF: A) DUMPING, B) INJURY, AND C) CAUSAL
17 LINK BETWEEN THE DUMPED IMPORTS AND THE ALLEGED INJURY.
18 SIMPLE ASSERTION, UNSUBSTANTIATED BY RELEVANT EVIDENCE
19 CANNOT BE CONSIDERED SUFFICIENT TO MEET THE REQUIREMENTS OF
20 THIS PARAGRAPH. THE APPLICATION SHALL CONTAIN SUCH
21 INFORMATION AS IS REASONABLY AVAILABLE TO THE APPLICANT ON
22 THE FOLLOWING:

1 (1) THE IDENTITY OF THE APPLICANT AND A DESCRIPTION OF
2 THE VOLUME AND THE VALUE OF THE DOMESTIC PRODUCTION OF THE
3 LIKE PRODUCT OF THE APPLICANT;

4 (2) A COMPLETE DESCRIPTION OF THE ALLEGED DUMPED
5 PRODUCT, THE NAMES OF THE COUNTRY OR COUNTRIES OF ORIGIN OR
6 EXPORT IN QUESTION, THE IDENTITY OF EACH KNOWN EXPORTER OR
7 FOREIGN PRODUCER AND A LIST OF KNOWN PERSONS IMPORTING THE
8 PRODUCT IN QUESTION;

9 (3) INFORMATION ON THE NORMAL VALUE OR DOMESTIC
10 SELLING PRICE OF THE PRODUCT IN QUESTION IN THE COUNTRY OR
11 COUNTRIES OF ORIGIN OR EXPORT;

12 (4) INFORMATION ON THE EVOLUTION OF THE VOLUME AND
13 EXPORT PRICES OF THE ALLEGED DUMPED IMPORTS, THE EFFECT OF
14 THESE IMPORTS ON PRICES OF LIKE PRODUCT IN THE DOMESTIC
15 MARKET AND THE CONSEQUENT IMPACT OF THE IMPORTS ON THE
16 DOMESTIC INDUSTRY.

17 PHILIPPINE TRADE, AGRICULTURE OR FINANCE ATTACHÉS AND
18 OTHER CONSULAR OFFICIALS OR ATTACHÉS IN THE CONCERNED
19 EXPORTING MEMBER COUNTRIES ARE MANDATED TO FURNISH THE
20 APPLICANT PERTINENT INFORMATION OR DOCUMENTS TO SUPPORT HIS
21 COMPLAINT WITHIN A PERIOD NOT EXCEEDING THIRTY (30) DAYS FROM
22 RECEIPT OF A REQUEST.

23 THE APPLICATION SHALL BE FILED WITH THE SECRETARY OF
24 TRADE AND INDUSTRY IN THE CASE OF NON-AGRICULTURAL PRODUCT,

1 COMMODITY OR ARTICLE, OR WITH THE SECRETARY OF AGRICULTURE
2 IN THE CASE OF AGRICULTURAL PRODUCT, COMMODITY OR ARTICLE.

3 THE APPLICATION SHALL BE CONSIDERED TO HAVE BEEN MADE
4 "BY OR ON BEHALF OF THE DOMESTIC INDUSTRY" IF IT IS SUPPORTED BY
5 THOSE DOMESTIC PRODUCERS WHOSE COLLECTIVE OUTPUT
6 CONSTITUTE MORE THAN FIFTY PERCENT (50%) OF THE TOTAL
7 PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THAT PORTION OF
8 THE DOMESTIC INDUSTRY EXPRESSING EITHER SUPPORT FOR OR
9 OPPOSITION TO THE APPLICATION. IN CASES INVOLVING AN
10 EXCEPTIONALLY LARGE NUMBER OF PRODUCERS, DEGREE OF SUPPORT
11 AND OPPOSITION MAY BE DETERMINED BY USING STATISTICALLY VALID
12 SAMPLING TECHNIQUE OR BY CONSULTING THEIR REPRESENTATIVE
13 ORGANIZATIONS. HOWEVER, NO INVESTIGATION SHALL BE INITIATED
14 WHEN DOMESTIC PRODUCERS EXPRESSLY SUPPORTING THE
15 APPLICATION ACCOUNT FOR LESS THAN TWENTY-FIVE PERCENT (25%)
16 OF TOTAL PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THE
17 DOMESTIC INDUSTRY.

18 IN SPECIAL CIRCUMSTANCES, THE SECRETARY SHALL *MOTU*
19 *PROPRIO* INITIATE AN INVESTIGATION IF THERE IS SUFFICIENT EVIDENCE
20 OF DUMPING, INJURY, AND CAUSAL LINK, TO JUSTIFY THE INITIATION OF
21 AN INVESTIGATION.

22 WITHIN FIVE (5) WORKING DAYS FROM RECEIPT OF A PROPERLY
23 DOCUMENTED APPLICATION, THE SECRETARY SHALL EXAMINE THE
24 ACCURACY AND ADEQUACY OF THE PETITION TO DETERMINE WHETHER

1 THERE IS SUFFICIENT EVIDENCE TO JUSTIFY THE INITIATION OF
2 INVESTIGATION. IF THERE IS NO SUFFICIENT EVIDENCE TO JUSTIFY
3 INITIATION, THE SECRETARY SHALL DISMISS THE PETITION AND
4 PROPERLY NOTIFY THE SECRETARY OF FINANCE, THE COMMISSIONER
5 OF CUSTOMS AND OTHER PARTIES CONCERNED REGARDING SUCH
6 DISMISSAL. THE SECRETARY SHALL EXTEND LEGAL, TECHNICAL AND
7 OTHER ASSISTANCE TO THE CONCERNED DOMESTIC PRODUCERS AND
8 THEIR ORGANIZATIONS AT ALL STAGES OF THE ANTI-DUMPING ACTION.

9 C. NOTICE TO THE SECRETARY OF FINANCE

10 UPON RECEIPT OF THE APPLICATION, THE SECRETARY SHALL,
11 WITHOUT DELAY, NOTIFY THE SECRETARY OF FINANCE AND FURNISH
12 HIM WITH A COMPLETE COPY OF THE APPLICATION, OR INFORMATION
13 IN CASE THE INITIATION IS MADE ON HIS OWN MOTION INCLUDING ITS
14 ANNEXES, IF ANY. THE SECRETARY OF FINANCE SHALL IMMEDIATELY
15 INFORM THE COMMISSIONER OF CUSTOMS REGARDING THE FILING AND
16 PENDENCY OF THE APPLICATION OR INFORMATION AND INSTRUCT HIM
17 TO GATHER AND TO FURNISH THE SECRETARY WITHIN FIVE (5) DAYS
18 FROM RECEIPT OF THE INSTRUCTIONS OF THE SECRETARY OF FINANCE
19 COPIES OF ALL IMPORT ENTRIES AND RELEVANT DOCUMENTS COVERING
20 SUCH ALLEGEDLY DUMPED PRODUCT, COMMODITY OR ARTICLE WHICH
21 ENTERED THE PHILIPPINES DURING THE LAST TWELVE (12) MONTHS
22 PRECEDING THE DATE OF PROTEST. THE COMMISSIONER OF CUSTOMS
23 SHALL ALSO MAKE SUCH SIMILAR ADDITIONAL REPORTS ON THE

1 NUMBER, VOLUME AND VALUE OF THE IMPORTATION OF ALLEGEDLY
2 DUMPED PRODUCT, COMMODITY OR ARTICLE TO THE SECRETARY
3 EVERY TEN (10) DAYS THEREAFTER.

4 D. NOTICE TO EXPORTING MEMBER-COUNTRY

5 UPON RECEIPT OF A PROPERLY DOCUMENTED APPLICATION AND
6 BEFORE PROCEEDING TO INITIATE AN INVESTIGATION, THE SECRETARY
7 SHALL NOTIFY THE GOVERNMENT OF THE EXPORTING COUNTRY ABOUT
8 THE IMPENDING ANTI-DUMPING INVESTIGATION. HOWEVER, THE
9 SECRETARY SHALL REFRAIN FROM PUBLISHING THE APPLICATION FOR
10 THE INITIATION OF THE INVESTIGATION BEFORE A DECISION HAS BEEN
11 MADE TO INITIATE AN INVESTIGATION.

12 E. NOTICE TO CONCERNED PARTIES AND SUBMISSION OF
13 EVIDENCES

14 WITHIN TWO (2) DAYS FROM INITIATION OF THE INVESTIGATION
15 AND AFTER HAVING NOTIFIED THE EXPORTING COUNTRY, THE
16 SECRETARY SHALL IDENTIFY ALL INTERESTED PARTIES I.E.
17 PROTESTEES-IMPORTER AND EXPORTER, NOTIFY AND REQUIRE THEM TO
18 SUBMIT WITHIN THIRTY (30) DAYS FROM RECEIPT OF SUCH NOTICE,
19 EVIDENCES AND INFORMATION OR REPLY TO THE QUESTIONNAIRE TO
20 DISPUTE OR CONTRADICT THE ALLEGATIONS CONTAINED IN THE
21 APPLICATION. AT THIS POINT, THE IMPORTER IS GIVEN THE
22 OPPORTUNITY TO PRESENT EVIDENCES TO PROVE THAT HE IS NOT
23 INVOLVED IN DUMPING. HE SHALL FURNISH THEM WITH A COPY OF THE

1 APPLICATION AND ITS ANNEXES SUBJECT TO THE REQUIREMENT TO
2 PROTECT CONFIDENTIAL INFORMATION EITHER BY PERSONAL DELIVERY
3 OR BY REGISTERED MAIL, WHICHEVER IS MORE CONVENIENT AND
4 EXPEDITIOUS. NOTICE SHALL BE DEEMED TO HAVE BEEN RECEIVED
5 FIVE (5) DAYS FROM THE DATE ON WHICH IT WAS SENT TO THE
6 RESPONDENT OR TRANSMITTED TO THE APPROPRIATE DIPLOMATIC
7 REPRESENTATIVE OF THE EXPORTING MEMBER, OR AN OFFICIAL
8 REPRESENTATIVE OF THE EXPORTING TERRITORY. IF NO SUCH
9 EVIDENCE IS SUBMITTED OR ANY PARTY REFUSES OR DOES NOT PROVIDE
10 INFORMATION OR REPLY TO THE QUESTIONNAIRE WITHIN THE
11 PRESCRIBED PERIOD, THE SECRETARY SHALL MAKE SUCH PRELIMINARY
12 DETERMINATION OF THE CASE ON THE BASIS OF INFORMATION
13 AVAILABLE, AMONG OTHERS, THE FACTS ALLEGED IN THE PETITION AND
14 THE SUPPORTING INFORMATION AND DOCUMENTS SUPPLIED BY THE
15 PETITIONER.

16 F. PRELIMINARY DETERMINATION

17 NOT LATER THAN THIRTY (30) WORKING DAYS FROM RECEIPT OF
18 THE ANSWER OF THE RESPONDENT IMPORTER, EXPORTER, EXPORTING
19 MEMBER-COUNTRY, AND OTHER INTERESTED PARTIES, THE SECRETARY
20 SHALL, ON THE BASIS OF THE APPLICATION OF THE AGGRIEVED PARTY
21 AND THE ANSWER OF THE RESPONDENT/S AND THEIR RESPECTIVE
22 SUPPORTING DOCUMENTS OR INFORMATION, MAKE A PRELIMINARY
23 DETERMINATION OF THE APPLICATION FOR THE IMPOSITION OF ANTI-
24 DUMPING DUTY .

1 IN THE PRELIMINARY DETERMINATION, THE SECRETARY SHALL
2 ESSENTIALLY DETERMINE THE FOLLOWING:

3 (1) PRICE DIFFERENCE BETWEEN THE EXPORT PRICE AND THE
4 NORMAL VALUE OF THE ARTICLE IN QUESTION IN THE COUNTRY OF
5 EXPORT ORIGIN;

6 (2) THE PRESENCE AND EXTENT OF MATERIAL INJURY OR
7 THREAT OF INJURY TO THE DOMESTIC INDUSTRY PRODUCING LIKE
8 PRODUCT OR THE MATERIAL RETARDATION OF THE ESTABLISHMENT OF
9 A DOMESTIC INDUSTRY; AND

10 (3) THE CAUSAL RELATIONSHIP BETWEEN THE ALLEGEDLY
11 DUMPED PRODUCT, COMMODITY OR ARTICLE AND THE MATERIAL
12 INJURY OR THREAT OF MATERIAL INJURY TO THE AFFECTED DOMESTIC
13 INDUSTRY OR MATERIAL RETARDATION OF THE ESTABLISHMENT OF
14 DOMESTIC INDUSTRY.

15 THE PRELIMINARY FINDING OF THE SECRETARY, TOGETHER
16 WITH THE RECORDS OF THE CASE SHALL, WITHIN THREE (3) DAYS, BE
17 TRANSMITTED BY THE SECRETARY TO THE COMMISSION FOR ITS
18 IMMEDIATE FORMAL INVESTIGATION. IN CASE HIS PRELIMINARY
19 FINDING IS AFFIRMATIVE, THE BURDEN OF PROOF IS SHIFTED TO THE
20 RESPONDENT IMPORTER TO REBUT THE PRELIMINARY FINDING. THE
21 SECRETARY SHALL IMMEDIATELY ISSUE, THROUGH THE SECRETARY OF
22 FINANCE, WRITTEN INSTRUCTIONS TO THE COMMISSIONER OF
23 CUSTOMS TO IMPOSE WITHIN THREE (3) DAYS FROM RECEIPT OF

1 INSTRUCTIONS A CASH BOND EQUAL TO BUT NOT GREATER THAN THE
2 PROVISIONALLY ESTIMATED MARGIN OF DUMPING IN ADDITION TO ANY
3 OTHER DUTIES, TAXES AND CHARGES IMPOSED BY LAW ON LIKE
4 ARTICLES. THE CASH BOND SHALL BE DEPOSITED WITH THE
5 GOVERNMENT DEPOSITORY BANK AND SHALL BE HELD IN TRUST FOR
6 THE RESPONDENT IMPORTER. MOREOVER, THE POSTING OF CASH BOND
7 SHALL ONLY BE REQUIRED NO SOONER THAN SIXTY (60) DAYS FROM THE
8 DATE OF INITIATION OF THE INVESTIGATION. THE DATE OF INITIATION
9 OF THE INVESTIGATION IS DEEMED TO BE THE DATE THE SECRETARY
10 PUBLISHED SUCH NOTICE IN TWO (2) NEWSPAPERS OF GENERAL
11 CIRCULATION. THE PROVISIONAL ANTI-DUMPING DUTY MAY ONLY BE
12 IMPOSED FOR A FOUR (4) - MONTH PERIOD WHICH MAY BE EXTENDED TO
13 SIX (6) MONTHS UPON REQUEST BY THE EXPORTER/S REPRESENTING A
14 SIGNIFICANT PERCENTAGE OF THE TRADE INVOLVED. HOWEVER, A
15 PROVISIONAL ANTI-DUMPING DUTY LOWER THAN THE PROVISIONALLY
16 ESTIMATED MARGIN OF DUMPING CAN BE IMPOSED FOR A PERIOD OF SIX
17 (6) TO NINE (9) MONTHS IF, IT IS DEEMED SUFFICIENT TO REMOVE OR
18 PREVENT THE MATERIAL INJURY.

19 G. TERMINATION OF INVESTIGATION

20 THE SECRETARY OR THE COMMISSION, AS THE CASE MAY BE,
21 SHALL *MOTU PROPRIO* TERMINATE THE INVESTIGATION AT ANY STAGE
22 OF THE PROCEEDINGS IF THE PROVISIONALLY ESTIMATED MARGIN OF
23 DUMPING IS LESS THAN TWO PERCENT (2%) OF EXPORT PRICE OR THE
24 VOLUME OF DUMPED IMPORTS IS NEGLIGIBLE. THE VOLUME OF

1 DUMPED IMPORTS FROM A PARTICULAR COUNTRY SHALL NORMALLY BE
2 REGARDED AS NEGLIGIBLE IF IT ACCOUNTS FOR LESS THAN THREE
3 PERCENT (3%) OF THE IMPORTS OF THE LIKE ARTICLE IN THE
4 PHILIPPINES UNLESS COUNTRIES WHICH INDIVIDUALLY ACCOUNT FOR
5 LESS THAN THREE PERCENT (3%) OF THE IMPORTS OF THE LIKE
6 ARTICLE IN THE PHILIPPINES COLLECTIVELY ACCOUNT FOR MORE
7 THAN SEVEN PERCENT (7%) OF THE TOTAL IMPORTS OF THAT ARTICLE.

8 H. INVESTIGATION OF THE COMMISSION

9 WITHIN THREE (3) WORKING DAYS UPON ITS RECEIPT OF THE
10 RECORDS OF THE CASE FROM THE SECRETARY, THE COMMISSION
11 SHALL FORTHWITH SET THE CASE FOR FORMAL INVESTIGATION AND
12 SHALL ACCORDINGLY NOTIFY IN WRITING ALL PARTIES ON RECORD AND,
13 IN ADDITION, GIVE PUBLIC NOTICE OF THE EXACT INITIAL DATE, TIME
14 AND PLACE OF THE FORMAL INVESTIGATION THROUGH THE
15 PUBLICATION OF SUCH PARTICULARS AND A CONCISE SUMMARY OF THE
16 PETITION IN TWO (2) NEWSPAPERS OF GENERAL CIRCULATION.

17 IN THE FORMAL INVESTIGATION, THE COMMISSION SHALL
18 ESSENTIALLY DETERMINE THE FOLLOWING:

19 (1) IF THE ARTICLE IN QUESTION IS BEING IMPORTED INTO, OR
20 SOLD IN THE PHILIPPINES AT A PRICE LESS THAN ITS NORMAL VALUE;
21 AND THE DIFFERENCE, IF ANY, BETWEEN THE EXPORT PRICE AND THE
22 NORMAL VALUE OF THE ARTICLE.

1 (2) THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE
2 THREAT THEREOF TO DOMESTIC INDUSTRY, OR THE MATERIAL
3 RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY;

4 (3) THE EXISTENCE OF A CAUSAL RELATIONSHIP BETWEEN THE
5 ALLEGEDLY DUMPED PRODUCT, COMMODITY OR ARTICLE AND THE
6 MATERIAL INJURY OR THREAT OF MATERIAL INJURY TO THE AFFECTED
7 DOMESTIC INDUSTRY, OR MATERIAL RETARDATION OF THE
8 ESTABLISHMENT OF A DOMESTIC INDUSTRY;

9 (4) THE ANTI-DUMPING DUTY TO BE IMPOSED; AND

10 (5) THE DURATION OF THE IMPOSITION OF THE ANTI-DUMPING
11 DUTY.

12 THE COMMISSION IS HEREBY AUTHORIZED TO REQUIRE ANY
13 INTERESTED PARTY TO ALLOW ITS ACCESS TO OR OTHERWISE PROVIDE
14 NECESSARY INFORMATION TO ENABLE THE COMMISSION TO EXPEDITE
15 THE INVESTIGATION.

16 THE FORMAL INVESTIGATION SHALL BE CONDUCTED IN A
17 SUMMARY MANNER. NO DILATORY TACTICS NOR UNNECESSARY OR
18 UNJUSTIFIED DELAYS SHALL BE ALLOWED AND THE TECHNICAL RULES
19 OF EVIDENCE USED IN REGULAR COURT PROCEEDINGS SHALL NOT BE
20 APPLIED.

21 IN CASE ANY OR ALL OF THE PARTIES ON RECORD FAIL TO SUBMIT
22 THEIR ANSWERS TO QUESTIONNAIRES/POSITION PAPERS WITHIN THE

1 **PRESCRIBED PERIOD, THE COMMISSION SHALL BASE ITS FINDINGS ON**
2 **THE BEST AVAILABLE INFORMATION.**

3 **THE COMMISSION SHALL COMPLETE THE FORMAL**
4 **INVESTIGATION AND SUBMIT A REPORT OF ITS FINDINGS, WHETHER**
5 **FAVORABLE OR NOT, TO THE SECRETARY WITHIN ONE HUNDRED**
6 **TWENTY (120) DAYS FROM RECEIPT OF THE RECORD OF THE CASE.**
7 ***PROVIDED, HOWEVER,* THAT THE COMMISSION SHALL, BEFORE A FINAL**
8 **DETERMINATION IS MADE, INFORM ALL THE INTERESTED PARTIES IN**
9 **WRITING OF THE ESSENTIAL FACTS UNDER CONSIDERATION WHICH**
10 **FORM THE BASIS FOR THE DECISION TO APPLY DEFINITIVE MEASURES.**
11 **SUCH DISCLOSURE SHOULD TAKE PLACE IN SUFFICIENT TIME FOR THE**
12 **PARTIES TO DEFEND THEIR INTERESTS.**

13 **I. DETERMINATION OF MATERIAL INJURY OR THREAT THEREOF**

14 **THE PRESENCE AND EXTENT OF MATERIAL INJURY TO THE**
15 **DOMESTIC INDUSTRY, AS A RESULT OF THE DUMPED IMPORTS SHALL BE**
16 **DETERMINED ON THE BASIS OF POSITIVE EVIDENCE AND SHALL REQUIRE**
17 **AN OBJECTIVE EXAMINATION BUT SHALL NOT BE LIMITED TO THE**
18 **FOLLOWING:**

19 **(1) THE RATE AND AMOUNT OF IMPORTS, EITHER IN ABSOLUTE**
20 **TERMS OR RELATIVE TO PRODUCTION OR CONSUMPTION IN THE**
21 **DOMESTIC MARKET;**

22 **(2) THE EFFECT OF THE DUMPED IMPORTS ON PRICES IN THE**
23 **DOMESTIC MARKET FOR LIKE PRODUCT, COMMODITY OR ARTICLE,**

1 THAT IS, WHETHER THERE HAS BEEN A SIGNIFICANT PRICE
2 UNDERCUTTING BY THE DUMPED IMPORTS AS COMPARED WITH THE
3 PRICE OF LIKE PRODUCT, COMMODITY OR ARTICLE IN THE DOMESTIC
4 MARKET, OR WHETHER THE EFFECTS OF SUCH IMPORTS IS OTHERWISE
5 TO DEPRESS PRICES TO A SIGNIFICANT DEGREE OR PREVENT PRICE
6 INCREASES, WHICH OTHERWISE WOULD HAVE OCCURRED, TO A
7 SIGNIFICANT DEGREE; AND

8 (3) THE RESULTING EFFECT OF THE DUMPED IMPORTS ON THE
9 DOMESTIC PRODUCERS OR THE RESULTING RETARDATION OF THE
10 ESTABLISHMENT OF A DOMESTIC INDUSTRY MANUFACTURING LIKE
11 PRODUCT, COMMODITY OR ARTICLE, INCLUDING AN EVALUATION OF
12 ALL RELEVANT ECONOMIC FACTORS AND INDICES HAVING A BEARING ON
13 THE STATE OF THE DOMESTIC INDUSTRY CONCERNED, SUCH AS, BUT NOT
14 LIMITED TO, ACTUAL OR POTENTIAL DECLINE IN OUTPUT, SALES,
15 MARKET SHARE, PROFITS, PRODUCTIVITY, RETURN ON INVESTMENTS,
16 OR UTILIZATION OF CAPACITY, FACTORS AFFECTING DOMESTIC PRICES;
17 THE MAGNITUDE OF DUMPING; ACTUAL AND POTENTIAL NEGATIVE
18 EFFECTS ON CASH FLOW, INVENTORIES, EMPLOYMENT, WAGES,
19 GROWTH, AND ABILITY TO RAISE CAPITAL OR INVESTMENTS.

20 THE EXTENT OF INJURY OF THE DUMPED IMPORTS TO THE
21 DOMESTIC INDUSTRY SHALL BE DETERMINED BY THE SECRETARY AND
22 THE COMMISSION UPON EXAMINATION OF ALL RELEVANT EVIDENCE.
23 ANY KNOWN FACTORS OTHER THAN THE DUMPED IMPORTS WHICH AT

1 THE SAME TIME ARE INJURING THE DOMESTIC INDUSTRY SHALL ALSO BE
2 EXAMINED AND THE INJURIES CAUSED BY THESE FACTORS MUST NOT BE
3 ATTRIBUTED TO THE DUMPED IMPORTS. THE RELEVANT EVIDENCE MAY
4 INCLUDE, BUT SHALL NOT BE LIMITED TO THE FOLLOWING:

5 (1) THE VOLUME AND VALUE OF IMPORTS NOT SOLD AT DUMPING
6 PRICES;

7 (2) CONTRACTION IN DEMAND OR CHANGES IN CONSUMPTION
8 PATTERN;

9 (3) TRADE RESTRICTIVE PRACTICES AND COMPETITION
10 BETWEEN FOREIGN AND DOMESTIC PRODUCERS;

11 (4) DEVELOPMENTS IN TECHNOLOGY; AND

12 (5) EXPORT PERFORMANCE AND PRODUCTIVITY OF DOMESTIC
13 INDUSTRY.

14 A DETERMINATION OF A THREAT OF MATERIAL INJURY SHALL BE
15 BASED ON FACTS AND NOT MERELY ON ALLEGATION, CONJECTURE OR
16 REMOTE POSSIBILITY. THE CHANGE IN CIRCUMSTANCES WHICH WOULD
17 CREATE A SITUATION IN WHICH THE DUMPING WOULD CAUSE INJURY
18 MUST BE CLEARLY FORESEEN AND IMMINENT. IN MAKING A
19 DETERMINATION REGARDING THE EXISTENCE OF A THREAT OF
20 MATERIAL INJURY, THE FOLLOWING SHALL BE CONSIDERED, *INTER*
21 *ALIA*, COLLECTIVELY:

1 (1) A SIGNIFICANT RATE OF INCREASE OF DUMPED IMPORTS INTO
2 THE DOMESTIC MARKET INDICATING THE LIKELIHOOD OF
3 SUBSTANTIALLY INCREASED IMPORTATION;

4 (2) SUFFICIENTLY FREELY DISPOSABLE, OR AN IMMINENT,
5 SUBSTANTIAL INCREASE IN, CAPACITY OF THE EXPORTER INDICATING
6 THE LIKELIHOOD OF SUBSTANTIALLY INCREASED DUMPED EXPORTS TO
7 THE DOMESTIC MARKET, TAKING INTO ACCOUNT THE AVAILABILITY OF
8 OTHER EXPORT MARKETS TO ABSORB ANY ADDITIONAL EXPORTS;

9 (3) WHETHER IMPORTS ARE ENTERING AT PRICES THAT WILL
10 HAVE A SIGNIFICANT DEPRESSING OR SUPPRESSING EFFECT ON
11 DOMESTIC PRICES, AND WOULD LIKELY INCREASE DEMAND FOR
12 FURTHER IMPORTS; AND

13 (4) INVENTORIES OF THE PRODUCT BEING INVESTIGATED.

14 J. VOLUNTARY PRICE UNDERTAKING

15 ANTI-DUMPING INVESTIGATION MAY BE SUSPENDED OR
16 TERMINATED WITHOUT THE IMPOSITION OF PROVISIONAL MEASURES OR
17 ANTI-DUMPING DUTIES UPON RECEIPT OF THE COMMISSION OF A
18 SATISFACTORY VOLUNTARY PRICE UNDERTAKING EXECUTED BY THE
19 EXPORTER UNDER OATH AND ACCEPTED BY THE AFFECTED INDUSTRY
20 THAT HE HAS REVISED OR INCREASED HIS PRICES; OR HAS CEASED
21 EXPORTS TO THE PHILIPPINES AT DUMPED PRICES, THEREBY
22 ELIMINATING THE MATERIAL INJURY TO THE DOMESTIC INDUSTRY
23 PRODUCING LIKE PRODUCT. PRICE INCREASES UNDER SUCH

1 UNDERTAKINGS SHALL NOT BE HIGHER THAN NECESSARY TO ELIMINATE
2 THE MARGIN OF DUMPING.

3 PRICE UNDERTAKING SHALL BE ACCEPTED ONLY AFTER A
4 PRELIMINARY AFFIRMATIVE DETERMINATION OF DUMPING AND INJURY
5 CAUSED BY SUCH DUMPING HAS BEEN MADE. NO PRICE UNDERTAKING
6 SHALL TAKE EFFECT UNLESS IT IS APPROVED BY THE SECRETARY AFTER
7 A RECOMMENDATION BY THE COMMISSION.

8 EVEN WITH THE PRESENCE AND/OR ACCEPTANCE BY THE
9 AFFECTED DOMESTIC INDUSTRY OF SUCH AN UNDERTAKING, THE
10 INVESTIGATION OF DUMPING AND INJURY SHALL NEVERTHELESS BE
11 CONTINUED AND COMPLETED BY THE COMMISSION IF THE EXPORTER SO
12 DESIRES OR UPON ADVISE BY THE SECRETARY. THE UNDERTAKING
13 SHALL AUTOMATICALLY LAPSE IN CASE OF A NEGATIVE FINDING. IN
14 CASE OF ANY AFFIRMATIVE FINDING, THE UNDERTAKING SHALL
15 CONTINUE CONSISTENT WITH THE PROVISIONS OF ARTICLE VI OF THE
16 GATT 1994.

17 **K. CUMULATION OF IMPORTS**

18 WHEN IMPORTS OF PRODUCTS, COMMODITIES OR ARTICLES FROM
19 MORE THAN ONE COUNTRY ARE SIMULTANEOUSLY THE SUBJECT OF AN
20 ANTI-DUMPING INVESTIGATION, THE SECRETARY OR THE COMMISSION
21 MAY CUMULATIVELY ASSESS THE EFFECTS OF SUCH IMPORTS ONLY IF
22 THE SECRETARY AND THE COMMISSION ARE CONVINCED THAT:

1 (1) THE MARGIN OF DUMPING ESTABLISHED IN RELATION TO THE
2 IMPORTS FROM EACH COUNTRY IS MORE THAN *DE MINIMIS* AS DEFINED
3 IN SUBSECTION G;

4 (2) THE VOLUME OF SUCH IMPORTS FROM EACH COUNTRY IS NOT
5 NEGLIGIBLE, ALSO AS DEFINED IN SUBSECTION G; AND

6 (3) A CUMULATIVE ASSESSMENT OF THE EFFECTS OF SUCH
7 IMPORTS IS WARRANTED IN THE LIGHT OF THE CONDITIONS OF
8 COMPETITION BETWEEN THE IMPORTED PRODUCTS, COMMODITIES OR
9 ARTICLES AND THE CONDITIONS OF COMPETITION BETWEEN THE
10 IMPORTED PRODUCTS AND THE LIKE DOMESTIC PRODUCTS,
11 COMMODITIES AND ARTICLES.

12 L. IMPOSITION OF THE ANTI-DUMPING DUTY

13 THE SECRETARY WITHIN TEN (10) WORKING DAYS FROM HIS
14 RECEIPT OF THE FAVORABLE REPORT OF THE COMMISSION, SHALL
15 ISSUE A DEPARTMENT ORDER DIRECTING THE COMMISSIONER OF
16 CUSTOMS THROUGH THE SECRETARY OF FINANCE TO IMPOSE WITHIN
17 THREE (3) DAYS FROM THE RECEIPT OF INSTRUCTIONS THE DEFINITIVE
18 DUMPING DUTY TO BE LEVIED, COLLECTED AND PAID AS PRESCRIBED
19 HEREIN, IN ADDITION TO ANY OTHER DUTIES, TAXES AND CHARGES
20 IMPOSED BY LAW ON SUCH ARTICLE.

21 IN CASE CASH BOND HAS BEEN FILED, THE SAME SHALL BE
22 APPLIED TO THE ANTI-DUMPING DUTY ASSESSED. IF THE CASH BOND IS
23 IN EXCESS OF THE DUMPING DUTY ASSESSED, THE REMAINDER SHALL BE

1 RETURNED TO THE IMPORTER IMMEDIATELY INCLUDING INTEREST
2 EARNED, IF ANY: *PROVIDED*, THAT NO INTEREST SHALL BE PAYABLE BY
3 THE GOVERNMENT ON THE AMOUNT TO BE RETURNED. IF THE ASSESSED
4 ANTI-DUMPING DUTY IS HIGHER THAN THE CASH BOND FILED, THE
5 DIFFERENCE SHALL NOT BE COLLECTED.

6 UPON DETERMINATION OF ANTI-DUMPING DUTY, THE
7 COMMISSIONER OF CUSTOMS SHALL SUBMIT TO THE SECRETARY,
8 THROUGH THE SECRETARY OF FINANCE, A REPORT ON THE DISPOSITION
9 OF CASH BONDS AND A CERTIFIED COMPUTATION OF EACH CASE OF
10 ANTI-DUMPING DUTY.

11 IN CASE OF A NEGATIVE FINDING BY THE COMMISSION, THE
12 SECRETARY SHALL, AFTER THE LAPSE OF THE PERIOD FOR THE
13 PETITIONER TO APPEAL TO THE COURT OF TAX APPEALS, ISSUE,
14 THROUGH THE SECRETARY OF FINANCE, AN ORDER FOR THE
15 COMMISSIONER OF CUSTOMS FOR THE IMMEDIATE RELEASE OF THE
16 CASH BOND TO THE IMPORTER. IN ADDITION, ALL THE PARTIES
17 CONCERNED SHALL ALSO BE PROPERLY NOTIFIED OF THE DISMISSAL OF
18 THE CASE.

19 M. PERIOD SUBJECT TO DUMPING DUTY

20 ANTI-DUMPING DUTY MAY BE LEVIED RETROACTIVELY FROM THE
21 DATE THE CASH BOND HAS BEEN IMPOSED AND ONWARDS. HOWEVER,
22 AN ANTI-DUMPING DUTY MAY BE LEVIED ON PRODUCTS WHICH WERE
23 IMPORTED INTO THE COUNTRY NOT MORE THAN NINETY (90) DAYS

1 PRIOR TO THE DATE OF APPLICATION OF CASH BOND, WHEN THE
2 AUTHORITIES DETERMINE FOR THE DUMPED PRODUCT IN QUESTION
3 THAT:

4 (1) THERE IS A HISTORY OF DUMPING WHICH CAUSED INJURY OR
5 THAT THE IMPORTER WAS, OR SHOULD HAVE BEEN, AWARE THAT THE
6 EXPORTER PRACTICES DUMPING AND THAT SUCH DUMPING WOULD
7 CAUSE INJURY; AND

8 (2) THE INJURY IS CAUSED BY MASSIVE DUMPED IMPORTS OF A
9 PRODUCT IN A RELATIVELY SHORT TIME WHICH IN LIGHT OF THE
10 TIMING AND THE VOLUME OF THE DUMPED IMPORTS AND OTHER
11 CIRCUMSTANCES (SUCH AS RAPID BUILD-UP OF INVENTORIES OF THE
12 IMPORTED PRODUCT) IS LIKELY TO SERIOUSLY UNDERMINE THE
13 REMEDIAL EFFECT OF THE DEFINITIVE ANTI-DUMPING DUTY TO BE
14 APPLIED: *PROVIDED*, THAT THE IMPORTERS CONCERNED HAVE BEEN
15 GIVEN AN OPPORTUNITY TO COMMENT.

16 NO DUTIES SHALL BE LEVIED RETROACTIVELY PURSUANT TO
17 HEREIN SUBSECTION ON PRODUCTS ENTERED FOR CONSUMPTION PRIOR
18 TO THE DATE OF INITIATION OF THE INVESTIGATION.

19 N. COMPUTATION OF ANTI-DUMPING DUTY

20 IF THE NORMAL VALUE OF AN ARTICLE CANNOT BE DETERMINED,
21 THE PROVISIONS FOR CHOOSING ALTERNATIVE NORMAL VALUE UNDER
22 ARTICLE VI OF GATT 1994 SHALL APPLY.

23 IF POSSIBLE AN INDIVIDUAL MARGIN OF DUMPING SHALL BE
24 DETERMINED FOR EACH KNOWN EXPORTER OR PRODUCER OF THE

1 ARTICLE UNDER INVESTIGATION. IN CASES, WHERE THE NUMBER OF
2 EXPORTERS, PRODUCERS, IMPORTERS OR TYPES OF PRODUCTS
3 INVOLVED IS SO LARGE AS TO MAKE SUCH DETERMINATION
4 IMPRACTICABLE, THE AUTHORITIES MAY LIMIT THEIR EXAMINATION
5 EITHER TO A REASONABLE NUMBER OF INTERESTED PARTIES OR
6 PRODUCTS BY USING SAMPLES WHICH ARE STATISTICALLY VALID ON
7 THE BASIS OF INFORMATION AVAILABLE TO THE AUTHORITIES AT THE
8 TIME OF THE SELECTION, OR TO THE LARGEST PERCENTAGE OF VOLUME
9 OF THE EXPORTS FROM THE COUNTRY IN QUESTION WHICH CAN
10 REASONABLY BE INVESTIGATED.

11 HOWEVER, IF A NON-SELECTED EXPORTER SUBMITS
12 INFORMATION, THE INVESTIGATION MUST EXTEND TO THAT EXPORTER
13 UNLESS THIS WOULD PREVENT THE INVESTIGATION'S TIMELY
14 COMPLETION.

15 NEW EXPORTERS OR PRODUCERS WHO HAVE NOT EXPORTED TO
16 THE PHILIPPINES DURING THE PERIOD OF INVESTIGATION WILL BE
17 SUBJECT TO AN ACCELERATED REVIEW. NO ANTI-DUMPING DUTIES
18 SHALL BE IMPOSED DURING THE REVIEW. CASH BOND MAY BE
19 REQUESTED TO ENSURE THAT IN CASE OF AFFIRMATIVE FINDINGS, ANTI-
20 DUMPING DUTIES CAN BE LEVIED RETROACTIVELY TO THE DATE OF
21 INITIATION OF THE REVIEW.

22 O. DURATION AND REVIEW OF THE ANTI-DUMPING DUTY

23 AS A GENERAL RULE, THE IMPOSITION OF AN ANTI-DUMPING DUTY
24 SHALL REMAIN IN FORCE ONLY AS LONG AND TO THE EXTENT

1 NECESSARY TO COUNTERACT DUMPING WHICH IS CAUSING OR
2 THREATENING TO CAUSE MATERIAL INJURY TO DOMESTIC INDUSTRY OR
3 MATERIAL RETARDATION OF THE ESTABLISHMENT OF SUCH INDUSTRY.

4 HOWEVER, THE NEED FOR THE CONTINUED IMPOSITION OF THE
5 ANTI-DUMPING DUTY MAY BE REVIEWED BY THE COMMISSION WHEN
6 WARRANTED *MOTU PROPRIO* OR UPON THE DIRECTION OF THE
7 SECRETARY, TAKING INTO CONSIDERATION THE NEED TO PROTECT
8 EXISTING OR ESTABLISHED DOMESTIC INDUSTRY AGAINST DUMPING.

9 ANY INTERESTED PARTY WITH SUBSTANTIAL POSITIVE
10 INFORMATION MAY ALSO PETITION THE SECRETARY FOR A REVIEW OF
11 THE CONTINUED IMPOSITION OF THE ANTI-DUMPING DUTY: *PROVIDED*,
12 THAT A REASONABLE PERIOD OF TIME HAS ELAPSED SINCE THE
13 IMPOSITION OF THE ANTI-DUMPING DUTY AND UPON THE NEED FOR A
14 REVIEW. INTERESTED PARTIES SHALL HAVE THE RIGHT TO REQUEST
15 THE SECRETARY TO EXAMINE:

16 (1) WHETHER THE CONTINUED IMPOSITION OF THE ANTI-
17 DUMPING DUTY IS NECESSARY TO OFFSET DUMPING; AND/OR

18 (2) WHETHER THE INJURY OR THREAT OF INJURY WOULD
19 LIKELY CONTINUE OR RECUR IF THE ANTI-DUMPING DUTY WERE
20 REMOVED OR MODIFIED.

21 IF THE COMMISSION DETERMINES THAT THE ANTI-DUMPING
22 DUTY IS NO LONGER NECESSARY OR WARRANTED, THE SECRETARY
23 SHALL, UPON ITS RECOMMENDATION, ISSUE A DEPARTMENT ORDER

1 IMMEDIATELY TERMINATING THE IMPOSITION OF THE ANTI-DUMPING
2 DUTY. ALL PARTIES CONCERNED SHALL BE NOTIFIED ACCORDINGLY OF
3 SUCH TERMINATION, INCLUDING THE SECRETARY OF FINANCE AND THE
4 COMMISSIONER OF CUSTOMS.

5 THE DURATION OF THE DEFINITIVE ANTI-DUMPING DUTY SHALL
6 NOT EXCEED FIVE (5) YEARS FROM THE DATE OF ITS IMPOSITION (OR
7 FROM THE DATE OF THE MOST RECENT REVIEW IF THAT REVIEW HAS
8 COVERED BOTH DUMPING AND INJURY) UNLESS THE COMMISSION HAS
9 DETERMINED IN A REVIEW INITIATED BEFORE THAT DATE ON THEIR
10 OWN INITIATIVE OR UPON A DULY SUBSTANTIATED REQUEST MADE BY
11 OR ON BEHALF OF THE DOMESTIC INDUSTRY WITHIN A REASONABLE
12 TIME PERIOD PRIOR TO THE TERMINATION DATE THAT THE
13 TERMINATION OF THE DUMPING DUTY WILL LIKELY LEAD TO THE
14 CONTINUATION OR RECURRENCE OF DUMPING AND INJURY.

15 THE PROVISIONS OF THIS SECTION REGARDING EVIDENCE AND
16 PROCEDURES SHALL APPLY TO ANY REVIEW CARRIED OUT UNDER THIS
17 SUBSECTION AND ANY SUCH REVIEW SHOULD BE CARRIED OUT
18 EXPEDITIOUSLY AND SHOULD BE CONDUCTED NOT LATER THAN ONE
19 HUNDRED FIFTY (150) DAYS FROM THE DATE OF INITIATION OF SUCH
20 REVIEW.

21 **P. JUDICIAL REVIEW**

22 ANY INTERESTED PARTY IN AN ANTI-DUMPING INVESTIGATION
23 WHO IS ADVERSELY AFFECTED BY A FINAL RULING IN CONNECTION WITH
24 THE IMPOSITION OF A DUMPING DUTY MAY FILE WITH THE COURT OF

1 TAX APPEALS, A PETITION FOR THE REVIEW OF SUCH RULING WITHIN
2 THIRTY (30) DAYS FROM HIS RECEIPT OF NOTICE OF THE FINAL RULING:
3 *PROVIDED, HOWEVER,* THAT THE FILING OF SUCH PETITION FOR REVIEW
4 SHALL NOT IN ANY WAY STOP, SUSPEND OR OTHERWISE HOLD THE
5 IMPOSITION OR COLLECTION, AS THE CASE MAY BE, OF THE ANTI-
6 DUMPING DUTY ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

7 THE RULES OF PROCEDURE OF THE COURT ON THE PETITION FOR
8 REVIEW FILED WITH THE COURT OF TAX APPEALS SHALL BE APPLIED.

9 Q. FORMAL AND PUBLIC NOTICES

10 THE SECRETARY OR THE COMMISSION SHALL INFORM IN
11 WRITING ALL INTERESTED PARTIES ON RECORD AND, IN ADDITION, GIVE
12 PUBLIC NOTICES BY PUBLISHING IN TWO (2) NEWSPAPERS OF GENERAL
13 CIRCULATION WHEN:

14 (1) INITIATING AN INVESTIGATION;

15 (2) CONCLUDING OR SUSPENDING INVESTIGATION;

16 (3) MAKING ANY PRELIMINARY OR FINAL DETERMINATION
17 WHETHER AFFIRMATIVE OR NEGATIVE;

18 (4) MAKING DECISION TO ACCEPT AN UNDERTAKING OR THE
19 TERMINATION OF AN UNDERTAKING; AND

20 (5) TERMINATING A DEFINITIVE ANTI-DUMPING DUTY.

1 **R. REPORT TO BE SUBMITTED BY THE BUREAU OF CUSTOMS**

2 THE SECRETARY SHALL SUBMIT TO THE COMMISSIONER OF
3 CUSTOMS FROM TIME TO TIME A LIST OF IMPORTED PRODUCTS
4 SUSCEPTIBLE TO UNFAIR TRADE PRACTICES. THE COMMISSIONER OF
5 CUSTOMS IS HEREBY MANDATED TO SUBMIT TO THE SECRETARY
6 MONTHLY REPORTS COVERING IMPORTATIONS OF SAID PRODUCTS,
7 INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

- 8 (1) COMMERCIAL INVOICE;
9 (2) BILL OF LADING;
10 (3) IMPORT ENTRIES; AND
11 (4) PRE-SHIPMENT REPORTS.

12 FAILURE TO COMPLY WITH THE SUBMISSION OF SUCH REPORT AS
13 PROVIDED HEREIN SHALL HOLD THE CONCERNED OFFICIALS LIABLE AND
14 SHALL BE PUNISHED WITH A FINE NOT EXCEEDING THE EQUIVALENT OF
15 SIX (6) MONTHS SALARY OR SUSPENSION NOT EXCEEDING ONE (1) YEAR.

16 **S. ADMINISTRATIVE SYSTEM SUPPORT**

17 UPON THE EFFECTIVITY OF THIS ACT, THE DEPARTMENTS OF
18 TRADE AND INDUSTRY AND AGRICULTURE, AND THE TARIFF
19 COMMISSION, SHALL ENSURE THE EFFICIENT AND EFFECTIVE
20 IMPLEMENTATION OF THIS ACT. ALL ANTI-DUMPING DUTIES
21 COLLECTED SHALL BE EARMARKED FOR THE STRENGTHENING OF THE
22 CAPABILITIES OF THE DEPARTMENTS OF TRADE AND INDUSTRY AND

1 **AGRICULTURE, AND THE TARIFF COMMISSION TO UNDERTAKE THEIR**
2 **RESPONSIBILITIES UNDER THIS ACT.**

3 **SEC. 5. *Penalty Clause.*** – Failure of the government officials
4 herein mentioned to prosecute, investigate and initiate necessary action
5 against the exporter as provided in this Act and of the rules and regulations
6 issued pursuant hereto shall be a ground for dismissal from office, in
7 addition to the sanctions provided in the Revised Penal Code and the Anti-
8 Graft and Corrupt Practices Act.

9 Failure of the concerned officials of the Bureau of Customs to
10 collect the cash bond or definitive dumping duty pursuant to the
11 department order of the Secretary shall constitute *prima facie* evidence of
12 dereliction of duty which shall be punishable by removal from the office.

13 The importer's license or charter to do business shall be revoked for
14 those found guilty of dumping. Further, its officers shall be disqualified
15 from holding official positions in corporations of other business entities in
16 the Philippines. A fine of not less than Five hundred thousand pesos
17 (P500,000.00) shall be imposed.

18 **SEC. 6. *Annual Report.*** – The use of funds under this Act shall be
19 subject to regular audit by the Commission on Audit which shall render an
20 annual report of its findings to Congress. Likewise, the Secretary shall
21 submit an annual report of its operation under this Act to Congress.

1 SEC. 7. *Oversight.* – There shall be a Congressional Oversight
2 Committee composed of the Chairmen of the Committee on Trade and
3 Industry of both the Senate and the House of Representatives, and
4 Members from the Committee on Ways and Means as designated in both
5 chambers.

6 SEC. 8. *Rules and Regulations.* – An inter-agency committee to be
7 composed of the Secretaries of the Departments of Trade and Industry,
8 Agriculture, and Finance, the Commissioner of the Bureau of Customs and
9 the Chairman of the Tariff Commission shall promulgate all rules and
10 regulations necessary to carry out their respective functions under this Act.

11 SEC. 9. *Repealing Clause.* – Section 301, Part 2, Title II, Book I of
12 the Tariff and Customs Code, as amended by Republic Act No. 7843 and
13 all other laws, decrees, rules and regulations, ordinances, executive or
14 administrative orders, and such other presidential issuances related to
15 dumping which are inconsistent with any of the provisions of this Act are
16 hereby repealed, amended or otherwise modified accordingly.

17 SEC. 10. *Separability Clause.* – If any of the provisions of this Act
18 is declared invalid by a competent court, the remainder of this Act or any
19 provisions not affected by such declaration of invalidity shall remain in
20 full force and effect.

1 SEC. 11. *Effectivity Clause.* - This Act shall take effect after fifteen
2 (15) days following its publication in at least two (2) newspapers of
3 general circulation.

Approved.

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