

SENATE OF THE PHILIPPINES
BILLS AND INDEX DIVISION

LEGISLATIVE HISTORY

HBN-7036, entitled:

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

S T A T U S

[First Regular Session, 11th Congress]
[1999]

- Introduced by Rep. TEVES, et. al.;
- Mar. 25 - Sent to the Senate requesting for concurrence;
- Apr. 19 - Read on First Reading and referred to the Committee(s)
on RULES;
- May 6 - House of Representatives requested the Senate for a
conference on the disagreeing provisions of SBN-1330
and HBN-7036, designating Representatives Suarez,
Teves, Lopus, Salceda, Belmonte, Jr., Montemayor,
Saludo, Jr. and Baculio as its conferees on April
28, 1999;
- Senate agreed to a conference on the disagreeing
provisions of both Bills, designating Senators
Enrile, Honasan, Barbers, Flavio and Cayetano
as its conferees;
- 10 - Senator Jaworski was made as member of the Senate panel
in the Conference Committee vice Senator Barbers;
- Jun. 2 - Conference Committee report submitted, recommending
that HBN-7063, in consolidation of SBN-1330 be
approved as reconciled;
- Sponsorship speech of Senator Enrile on the Conference
Committee report;
- Interpellation of Senator Guingona, Jr.;
- Conference Committee Report approved by the Senate;
- Jul. 13 - Received by the Office of the President (PLLO);
- 14 - Conference Committee Report approved by the House of
Representatives on June 1, 1999;
- Aug. 7 - Approved and signed into law by the President of the
Philippines;
- REPUBLIC ACT NO. 8751.



HOUSE OF REPRESENTATIVES

H. No. 7036

INTRODUCED BY HONORABLE TEVES, BRIONES, SALCEDA, SUAREZ, LARA, LAPUS, SUPLICO, GONZALES (R.), LOPEZ (R.), DY JR., DEQUINA, CANDAZO, PEREZ JR., SINGSÓN, GARCIA (E.) JR., NEPOMUCENO, SILVERIO, BUESER, MADRONA, NANTES, RECTO, OROLA JR., YOTOKO-VILLANUEVA, PARAS, YAPHA JR., LIBANAN, LOCSIN, VICENCIO, ALVAREZ (P.), SARMIENTO (R.), DILANGALEN, TAMMANG, COSALAN, CALALAY, LANOT, OCAMPO, PONCE, OSABEL, PILAPIL, SARENAS, TUAZON, SYJUCO, JALA, LIBAN, QUIMPO, FUENTEBELLA, MACARAMBON JR., AUMENTADO, ABAD, VELOSO, BANAAG, ABAYON, REYES JR., TULAGAN, JAAFAR, ANGPING, TAÑADA, ACOSTA, AQUINO III, CRUZ (T.), ADIONG, SALUDO JR., ARROYO, ALVAREZ (H.), APOSTOL, BUNYE, DATUMANONG, ECHIVERRI, GUNIGUNDO I, MORENO, SANDOVAL II, FORTUNO, JACOB, GARCIA (M.), LEVISTE, MAGTUBO, MONTEMAYOR, GULLAS, FUENTES, ROXAS II, ANGARA-CASTILLO, GONZALES II, BELMONTE JR., GOLEZ, JOAQUÍN, VILLAROSA, BARBERS, MALIKSI, MONFORT, LORETO-GO, ABUEG JR., AGUINALDO, ALBANO III, BATERINA, ESCUDERO, GONZALEZ (J.), GONZALEZ (R.), GORDON JR., HIZON, JOSON, KINTANAR, PADILLA (C.), SARMIENTO (A.), VILLAR JR., AND ROMUALDO, PER COMMITTEE REPORT NO. 223

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

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

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

4 “SEC. 302. Countervailing Duty. —

5 “Whenever it has been determined by the Tariff Commission
6 (hereinafter referred to as ‘the Commission’) that any imported product,
7 commodity or article of commerce is granted, directly or indirectly, by the
8 government in the country of origin or exportation, any kind or form of
9 specific subsidy that causes or threatens to cause material injury to, or
10 materially retards the growth or prevents the establishment of a domestic
11 industry, the Secretary of Trade and Industry, in the case of non-
12 agricultural product, commodity or article, or the Secretary of Agriculture,
13 in the case of agricultural product, commodity or article (both of whom are
14 hereinafter simply referred to as ‘the Secretary’, as the case may be) shall
15 issue a department order imposing a countervailing duty equal to the
16 ascertained amount of the subsidy. The same levy shall be imposed on
17 similar product, commodity or article thereafter imported to the Philippines
18 under like circumstance. The countervailing duty shall be in addition to
19 any ordinary duties, taxes and charges imposed by law on such imported
20 product, commodity or article:

1 “(a) *Initiation of Action.* – A countervailing action may be
2 initiated by the following:

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

6 “(2) In special circumstances where there is sufficient evidence of
7 an existence of a subsidy, injury and causal link, the Secretary of Trade
8 and Industry or the Secretary of Agriculture, as the case may be.

9 “(b) *Requirements.* – A petition shall be filed with the Secretary
10 and shall be accompanied by documents if any, which are reasonably
11 available to the petitioner and which contain information supporting the
12 facts that are essential to establish the presence of the elements required to
13 be present for the imposition of a countervailing duty, and shall further
14 state, among others:

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

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

1 (3) The name and address of the importer (or the names and
2 addresses of the importers, if there are several), the estimated aggregate or
3 cumulative quantity, the port or ports and the date or dates of arrival, the
4 import entry declaration of the imported product, commodity or article and
5 the estimated amount of the subsidy thereon; and

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

9 “A petition for the imposition of a countervailing duty shall be
10 considered to have been made ‘by or on behalf of the domestic industry’ if
11 it is supported by those domestic producers whose collective output
12 constitutes more than fifty percent (50%) of the total production of the like
13 product produced by that portion of the domestic industry expressing
14 either support for or opposition to the application. In cases involving an
15 exceptionally large number of producers, degree of support and opposition
16 may be determined by using statistically valid sampling technique or by
17 consulting their representative organizations. An investigation shall be
18 initiated when domestic producers supporting the application account for
19 at least twenty-five percent (25%) of the total production of the like
20 product produced by the domestic industry. The Secretary shall extend
21 legal, technical and other assistance to the concerned domestic producers
22 and their organizations at all stages of the countervailing action.

1 “(c) *Notice to the Secretary of Finance.* – Upon his receipt of the
2 petition, the Secretary shall, without delay, furnish the Secretary of
3 Finance with a complete copy of the petition, including its annexes, if any,
4 and request the latter to immediately inform the Commissioner of Customs
5 regarding the filing and pendency of the petition for the imposition of
6 countervailing duty and to instruct him to gather and secure all import
7 entries covering such allegedly subsidized product, commodity or article
8 without liquidation, and to submit to the Secretary of Finance, a complete
9 report on the number, volume, and value of the importation of the
10 allegedly subsidized product, commodity or article within ten (10) days
11 from receipt by the Commissioner of Customs of the instruction of the
12 Secretary of Finance, and to make such similar additional reports every ten
13 (10) days thereafter.

14 “(d) *Finding of a Prima Facie Case.* – Within ten (10) working
15 days from his receipt of the petition or information, the Secretary shall
16 review the accuracy and adequacy of the information or evidence provided
17 in the petition to determine the existence of a *prima facie* case that will
18 justify the initiation and/or conduct of an investigation.

19 Upon finding of a *prima facie* case, the Secretary shall immediately
20 issue, through the Secretary of Finance, a written instruction to the
21 Commissioner of Customs to require the importer of the allegedly
22 subsidized imported product, commodity or article to post a cash bond

1 equal to the provisionally estimated countervailing duty, in addition to the
2 corresponding ordinary duties, taxes and other charges imposed by law on
3 such product, commodity or article. The cash bond shall be deposited with
4 the government depository bank and shall be held in trust for the
5 respondent importer. If no *prima facie* case exists, the Secretary shall
6 dismiss the petition and shall properly notify the Secretary of Finance, the
7 Commission and other parties concerned, including the Commissioner of
8 Customs, regarding such dismissal.

9 “(e) *Notice to and Reply of the Government of the Exporting*
10 *Country.* – The Secretary shall avoid, unless a decision has been made to
11 initiate an investigation, any publicizing of the petition for the imposition
12 of countervailing duty. However, after receipt of a properly documented
13 petition and before proceeding to initiate an investigation, the Secretary
14 shall notify the government of the exporting country about the impending
15 countervailing investigation and shall permit such government to reply
16 within thirty (30) days from receipt of such notice.

17 “(f) *Notice to and Answer of the Exporter, Importer and other*
18 *Interested Parties.* – Within five (5) days from finding of a *prima facie*
19 case, the Secretary shall notify the exporter, importer and other interested
20 parties, and shall furnish them with a copy of the petition and its annexes,
21 if any, either by personal delivery or by registered mail, whichever is more
22 convenient and expeditious.

1 “The exporter, importer and other interested parties shall, not later
2 than thirty (30) days from their receipt of the notice, submit their answer,
3 including such relevant evidence or information as are reasonably
4 available to them to controvert the allegations of the petition, either by
5 personal delivery or by registered mail. If they fail to submit their answer,
6 they shall be declared in default, in which case, the Secretary shall make
7 such preliminary determination of the case on the basis of the facts alleged
8 in the petition and the supporting information and documents available.

9 “(g) *Preliminary Determination.* – Not later than thirty (30)
10 working days from his receipt of the answer or reply, as the case may be,
11 of the importer, exporter, the government of the exporting country and
12 other interested parties, the Secretary shall, on the basis of the petition of
13 the aggrieved party, the answer or reply, as the case may be, of the
14 respondent importer, exporter, the government of the exporting country
15 and other interested parties, and their respective supporting documents or
16 information, make a preliminary determination on the petition. The
17 preliminary findings of the Secretary, whether affirmative or negative,
18 together with the records of the case shall, without delay, be transmitted by
19 the Secretary to the Commission for its immediate formal investigation.

20 “(h) *Termination of Investigation by the Secretary or the*
21 *Commission.* – The Secretary or the Commission, as the case may be, shall
22 *motu proprio* terminate the countervailing investigation at any stage of the

1 proceedings if the amount of subsidy is *de minimis* as defined in existing
2 international trade agreements of which the Republic of the Philippines is a
3 party; or where the injury, or the volume of subsidized imported product,
4 commodity or article, actual or potential, is negligible.

5 “(1) *Formal Investigation by the Commission.* - Immediately upon
6 its receipt of the records of the case from the Secretary, the Commission
7 shall forthwith set the case for formal investigation and shall accordingly
8 notify in writing all interested parties and, in addition, give public notice of
9 the exact initial date, time and place of the formal investigation through the
10 publication of such particulars and a concise summary of the petition in
11 two (2) newspapers of general circulation.

12 “The Commission is hereby authorized to require any interested
13 party to allow access to, or otherwise provide, necessary information to
14 enable the Commission to expedite the investigation.

15 “In cases in which any interested party refuses access to, or
16 otherwise does not provide, necessary information within a reasonable
17 period of time or significantly impedes the investigation, final
18 determinations, affirmative or negative, may be made on the basis of the
19 facts available.

20 “In the formal investigation, the Commission shall essentially
21 determine:

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

3 “(2) The presence and extent of the material injury suffered by or
4 the presence and degree of the threat of material injury to, or the material
5 retardation of the growth or prevention of the establishment of, the
6 affected domestic industry; and

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

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

14 “(j) *Determination of the Existence of Subsidy.* — A subsidy is
15 deemed to exist:

16 (a) When the government or any public body in the country of
17 origin or exportation of the imported product, commodity or article
18 extends financial contribution to the producer, manufacturer or exporter of
19 such product, commodity or article in the forms of:

20 “(1) Direct transfer of funds such as grants, loans or equity
21 infusion; or

1 “(2) Potential direct transfer of funds or liabilities such as loan
2 guarantees; or

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

14 “(4) Goods or services other than general infrastructure provided
15 by the government in the country of origin or exportation to the producer,
16 manufacturer or exporter; or

17 “(5) Purchases of goods from the producer, manufacturer or
18 exporter by the government of the country of origin or exportation in order
19 to strengthen the competitive economic and financial capacity of such
20 producer, manufacturer or exporter; or

21 “(6) When the government in the country of origin or exportation
22 makes payments to a funding mechanism, or entrusts or directs a private

1 body to carry out one or more of the activities mentioned in the preceding
2 numbers; or

3 “(7) When there is any form of income or price support given
4 directly or indirectly by the government or any public body in the country
5 of origin or exportation to the producer, manufacturer or exporter of the
6 imported product, commodity or article or such other schemes and devices
7 which may be considered as subsidies as defined in this Act; and

8 (b) When there is a benefit conferred.

9 “(k) *Determination of Specific Subsidy.* – In determining whether
10 or not a subsidy is specific, the following principles shall apply:

11 “(1) Where the government or any public body in the country of
12 origin or exportation of the imported product, commodity or article is
13 explicitly mandated by law to limit the access to a subsidy to certain
14 enterprises, such subsidy shall be specific;

15 “(2) Where such government or public body through a law or
16 regulation establishes objective criteria and conditions governing the
17 eligibility for, and the amount of subsidy, specificity shall not exist,
18 provided that the eligibility is automatic and that such criteria or conditions
19 are strictly adhered to. Objective criteria shall mean those which are
20 neutral, which do not favour certain enterprises over others, and which are
21 economic in nature and horizontal in application, such as number of
22 employees or size of enterprise;

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

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

11 “(1) *Determination of Injury.* – The presence and extent of
12 material injury or the presence and degree of threat of material injury to a
13 domestic industry or the material retardation of the growth or the
14 prevention of the establishment of a nascent enterprise because of the
15 subsidized imports, shall be determined by the Secretary or the
16 Commission, as the case may be, on the basis of positive evidence and
17 shall require an objective examination of:

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

21 “(2) The effect of the subsidized imports on prices in the domestic
22 market for like product, commodity or article, that is, whether there has

1 been a significant price undercutting by the subsidized imports as
2 compared with the price of a like product, commodity or article in the
3 domestic market, or whether the effect of such imports is otherwise to
4 depress prices to a significant degree or to prevent price increases, which
5 otherwise would have occurred, to a significant degree; and

6 “(3) The resulting effect of the subsidized imports on the domestic
7 producers or manufacturers of like product, commodity or article,
8 including an evaluation of all relevant economic factors and indices having
9 a bearing on the state of the domestic industry concerned, such as, but not
10 limited to, actual and potential decline in output, sales, market share,
11 profits, productivity, return on investments, or utilization of capacity; other
12 factors affecting domestic prices; the actual or potential negative effects of
13 such subsidized imports on the cash flow, inventories, employment, wages,
14 growth, ability to raise capital or investment in the affected domestic
15 industry; the volumes and prices of non-subsidized imports of the product,
16 commodity or article in question; trade restrictive practices of and
17 competition between the foreign and domestic producers or manufacturers;
18 development of technology and the productivity of the domestic industry;
19 any known factors other than the subsidized imports which at the same
20 time are injuring the domestic industry; and, in the case of agriculture,
21 whether there has been an increased burden on the support programs of the
22 National Government.

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

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

9 "(2) Rate of increase of subsidized imports into the domestic
10 market indicating the likelihood of substantially increased importations;

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

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

19 "(5) Inventories of the product being investigated.

20 "In the case where the effect of the subsidized import will materially
21 retard the growth or prevent the establishment of a domestic industry,
22 information on number of persons employed, total capital invested in and

1 the production and sales volume and the aggregate production capacity of
2 said domestic industry can be augmented or substituted by a showing, in
3 the form of a factual study report or other data/information which supports
4 the claim that an industry which has potential to grow domestically is
5 adversely affected by the subsidized import.

6 "For this purpose, the Department of Trade and Industry for non-
7 agricultural products, and the Department of Agriculture for agricultural
8 products, shall conduct continuing studies to identify and determine the
9 specific industry or industries, whether locally existing or not, which have
10 the potential to grow or be established domestically and whose growth or
11 establishment will be retarded or prevented by a subsidized import.

12 "(m) *Cumulation of Imports.* — When imports of products,
13 commodities or articles from more than one (1) country are simultaneously
14 the subject of an investigation for the imposition of countervailing duty,
15 the Secretary or the Commission, as the case may be, may cumulatively
16 assess the effects of such imports only if the Commission is convinced
17 that:

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

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

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

7 “(n) *Public Notices and Consultation Proceedings.* – The Secretary
8 or the Commission, as the case may be, shall make public notices and
9 undertake consultation proceedings with the government of the exporting
10 country when:

11 (1) Initiating an investigation;

12 (2) Concluding or suspending an investigation;

13 (3) Making a preliminary or final determination, whether
14 affirmative or negative;

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

17 (5) Terminating a definitive countervailing duty.

18 “(o) *Voluntary Undertaking.* – When there is an offer from any
19 exporter of subsidized imports to revise its price or to cease exports to the
20 Philippines at subsidized prices, or where the government of the exporting
21 country agrees to eliminate or limit the subsidy or take other measures to
22 that effect, the Commission may determine the acceptability of such offer

1 or undertaking, and if satisfactory, make the necessary recommendation to
2 the Secretary who shall, upon acceptance of such voluntary undertaking,
3 advise the Commission to terminate or suspend the countervailing
4 investigation or to continue upon the request of the exporter. The
5 voluntary undertaking shall lapse if there is a negative finding of the
6 presence of subsidies or material injury.

7 "In the event of a positive finding of subsidization and material
8 injury, the price undertaking will continue consistent with the provisions of
9 this section.

10 (p) *Final Determination and Submission of Report by the*
11 *Commission.* – The Commission shall complete the formal investigation
12 and submit a report of its findings, whether favorable or unfavorable, to
13 the Secretary within one hundred fifty (150) days from receipt of the
14 records of the case: *Provided, However,* That it shall, before a final
15 determination is made, inform all the interested parties of the essential
16 facts under consideration which form the basis for the decision to apply
17 definitive measures. Such disclosure should take place in sufficient time
18 for the parties to defend their interests.

19 "(q) *Imposition of Countervailing Duty.* – The Secretary, shall
20 within ten (10) days from his receipt of the favorable report of the
21 Commission, issue a department order imposing the countervailing duty on
22 the subsidized imported product, commodity or article. He shall furnish

1 the Secretary of Finance with the copy of the order and request the latter to
2 direct the Commissioner of Customs to cause the countervailing duty to be
3 levied, collected and paid, in addition to any other duties, taxes and
4 charges imposed by law on such product, commodity or article.

5 "In case of a favorable report of the Commission, the cash bond
6 shall be applied to the countervailing duty assessed. If the cash bond is in
7 excess of the countervailing duty assessed, the remainder shall be returned
8 to the importer immediately: *Provided*, That no interest shall be payable by
9 the government on the amount to be returned.

10 "If the ruling of the Secretary in a petition for a countervailing duty
11 is unfavorable to the petitioner, the Secretary shall, after the lapse of the
12 period for the petitioner to appeal to the Court of Tax Appeals, issue,
13 through the Secretary of Finance, a department order for the immediate
14 release of the cash bond to the importer.

15 "(r) *Duration and Review of Countervailing Duty.* - As a general
16 rule, any imposition of countervailing duty shall remain in force only as
17 long as and to the extent necessary to counteract a subsidization which is
18 causing or threatening to cause material injury.

19 "However, the need for the continued imposition of the
20 countervailing duty may be reviewed by the Commission, when warranted,
21 upon direction of the Secretary.

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

10 "If as a result of the review by the Commission, the Secretary
11 determines that the countervailing duty is no longer necessary or
12 warranted, the imposition of the countervailing duty shall be terminated
13 immediately and all parties concerned shall be notified accordingly of such
14 termination, including and especially the Commissioner of Customs
15 through the Secretary of Finance.

16 "Notwithstanding the provisions of the preceding paragraphs of this
17 section, any countervailing duty shall be terminated on a date not later than
18 five (5) years from the date of its imposition (or from the date of the most
19 recent review if that review has covered both subsidization and material
20 injury), unless the Commission has determined, in a review initiated at
21 least six (6) months prior to the termination date upon the direction of the
22 Secretary or upon a duly substantiated request made by or on behalf of the

1 affected domestic industry, that the termination of the countervailing duty
2 would likely lead to the continuation or recurrence of the subsidization and
3 material injury.

4 "The procedure and evidence governing the disposition of the
5 petition for the imposition of countervailing duty shall apply with equal
6 measure to any review carried out under this section, and any such review
7 shall be carried out expeditiously and shall be concluded not later than one
8 hundred fifty (150) days from the date of the initiation of such a review.

9 "(s) *Judicial Review.* – Any interested party who is adversely
10 affected by a final ruling of the Secretary in connection with the
11 imposition of countervailing duty may file with the Court of Tax Appeals,
12 either by personal delivery or by registered mail, a petition for the review
13 of such ruling within thirty (30) days from his receipt of notice of the final
14 ruling of the Secretary: *Provided, however,* That the filing of such petition
15 for review shall not in any way stop, suspend or otherwise toll the
16 imposition and collection of the countervailing duty on the imported
17 product, commodity or article.

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

22 "(t) *Definition of Terms.* – For purposes of this section, the term:

1 “(1) ‘Domestic Industry’ shall refer to the domestic producers of
2 like product, commodity or article as a whole or to those whose collective
3 output of the products constitute a significant share of the total domestic
4 production of the product, commodity or article in the industries
5 concerned. In case the market in the Philippines is divided into two or
6 more competitive markets, the term ‘domestic industry’ shall refer to the
7 producers within each market although their production does not constitute
8 a significant portion of the total domestic industry: *Provided*, That there is
9 a concentration of subsidized imports into such a separate market: and
10 *Provided Further*, That the subsidized imports are causing injury to the
11 producers of all or almost all of the production within such market. When
12 producers are related to the exporters or importers, the term ‘domestic
13 industry’ may be interpreted as referring to the rest of the producers.

14 “(2) ‘Interested Parties’ shall include:

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

19 “(ii) A producer of the like product or a trade and business
20 association a majority of the members of which produce the like product in
21 the Philippines; and

1 “(iii) Labor unions that are representative of the industry or
2 coalitions of producers and/or labor unions.

3 “(3) ‘Like Product, Commodity or Article’ shall mean a product,
4 commodity or article which is identical or alike in all respects to the
5 questioned imported product, or in the absence of such product,
6 commodity or article, another product, commodity or article which
7 although not alike in all respects, has characteristics closely resembling
8 those of the imported product under consideration.

9 “(v) An inter-agency committee to be composed of the Secretaries
10 of Trade and Industry, Agriculture, and Finance and the Chairman of the
11 Tariff Commission shall promulgate all rules and regulations necessary to
12 carry out their respective functions under this section.”

13 SEC. 2. *Administrative System Support.* – Upon the effectivity of
14 this Act, the Departments of Trade and Industry and Agriculture and the
15 Tariff Commission shall ensure the efficient and effective implementation
16 of the provisions of this Act by creating a special unit that will administer
17 and undertake the functions relative to the disposition of countervailing
18 actions.

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

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

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

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

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

Approved,

