

SENATE

S. No. 1330

PREPARED BY THE COMMITTEES ON WAYS AND MEANS; TRADE AND
COMMERCE; AND CONSTITUTIONAL AMENDMENTS, REVISIONS OF
CODES AND LAWS WITH SENATORS FLAVIER AND ENRILE AS AUTHORS
THEREOF

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF
COUNTERVAILING DUTIES ON THE IMPORTATION
OF SUBSIDIZED PRODUCTS, COMMODITIES OR
ARTICLES OF COMMERCE, AMENDING FOR THE
PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS
CODE, AS AMENDED, AND FOR OTHER PURPOSES

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

1 SECTION 1. Section 302 of the Tariff and Customs Code, as
2 amended is hereby further amended as follows:

3 "Section 302. Countervailing Duty. -

4 "[a. Whenever any article is directly or indirectly
5 granted any bounty, subsidy or subvention upon its
6 production, manufacture or exportation in the country of
7 origin and/or exportation and the importation of which has

1 been determined by the Secretary, after investigation and
2 report of the Commission, is likely to injure an established
3 industry or prevent or considerably retard the establishment
4 of an industry in the Philippines, there shall be levied a
5 countervailing duty equal to the ascertained or estimated
6 amount of such bounty, subsidy or subvention: *Provided,*
7 That the injury criterion to a domestic industry shall be
8 applied only in the case of imports from countries which
9 adhere to the GATT Code on Subsidies and Countervailing
10 Duties: *Provided, further,* That the exemption of any exported
11 article from duty or tax imposed on like articles when destined
12 for consumption in the country of origin and/or exportation
13 or the refunding of such duty or tax, shall not be deemed to
14 constitute a grant of a bounty, subsidy or subvention within
15 the meaning of this subsection: *Provided, furthermore,* That
16 should an article be allowed drawback by the country of
17 origin and/or exportation, only the ascertained or estimated
18 excess of the amount of the drawback over the total amount
19 of the duties and/or internal taxes, if any, shall constitute a
20 bounty, subsidy or subvention: *Provided, finally,* That
21 petitions for imposition of countervailing duty shall be filed
22 with the Secretary of Finance. Upon finding of a *prima facie*
23 case of bounty, subsidy or subvention enjoyed by the
24 imported article and injury to, or likelihood of injury to a
25 domestic industry, the Secretary shall refer the case to the

Tariff Commission for investigation and shall instruct the Commissioner of Customs to require the filing of countervailing bonds for importation entered during the pendency of countervailing proceedings;]

“[b. The Secretary shall after receipt of the reports of the Commission, decide whether the article in question is granted any bounty, subsidy or subvention and if so fix the countervailing duty equal to the ascertained or estimated bounty, subsidy or subvention. He shall give due notice of his decision and shall direct the Commissioner of Customs to cause the countervailing duty to be levied, collected and paid in addition to any ordinary duties, taxes and charges imposed by law on such articles and on articles of the same specific kind of class subsequently imported under similar circumstances;]

“[c. Pending investigation and final decision of the case, the article in question shall be released from customs custody to the owner upon the filing of a bond equal to the ascertained or estimated amount of bounty, subsidy or subvention as provisionally determined by the Secretary and the Commission;]

“[d. The article, if not previously released under bond as provided for in this Section, shall be released after payment by the party concerned of the corresponding countervailing duty in addition to any ordinary duties, taxes and charges, if

any, or re-exported upon the filing of a bond in an amount equal to the estimated dutiable values of the article or an amount not to exceed the amount of bounty, subsidy or subvention, conditioned upon the presentation of a landing certificate issued by a consular officer of the Philippines at the country of destination. If the article has been previously released under bond, the party concerned shall be required to pay the corresponding countervailing duty in addition to ordinary duties, taxes and other charges if any;]

“[e. Whenever the Commission, on its own motion or upon application of any interested party, finds that the conditions which necessitated the imposition of the countervailing duty has ceased to exist, it shall submit the necessary recommendation to the Secretary for the discontinuance of the imposition of that duty. Any order under this Section by the Secretary shall be published in the *Official Gazette* and/or in a newspaper of general circulation;]

“[f. Any countervailing decision promulgated by the Secretary shall be effective for a period of five (5) years from the time of its promulgation except upon the representation of the interested party of the necessity to continue the implementation of said decision, in which case the Secretary shall advise the Commission to conduct an investigation to determine whether the conditions in subsection ‘a’ still exist. The action for extension shall be

brought before the Secretary at least six (6) months before the expiration of the period.]

“[The findings of the Commission shall be submitted to the Secretary at least three (3) months before the expiration of the period.]

“WHENEVER ANY PRODUCT, COMMODITY, OR ARTICLE OF COMMERCE IS GRANTED, DIRECTLY OR INDIRECTLY, BY THE GOVERNMENT IN THE COUNTRY OF ORIGIN OR EXPORTATION, ANY KIND OR FORM OF SPECIFIC SUBSIDY UPON THE PRODUCTION, MANUFACTURE, OR EXPORTATION OF SUCH PRODUCT, COMMODITY OR ARTICLE, AND THE IMPORTATION OF SUCH SUBSIDIZED PRODUCT, COMMODITY OR ARTICLE HAS BEEN DETERMINED BY THE SECRETARY OF TRADE AND INDUSTRY, IN THE CASE OF NON-AGRICULTURAL PRODUCT, COMMODITY OR ARTICLE, OR BY THE SECRETARY OF AGRICULTURE, IN THE CASE OF AGRICULTURAL PRODUCT, COMMODITY OR ARTICLE (BOTH OF WHOM ARE HEREINAFTER SIMPLY REFERRED TO AS “THE SECRETARY”, AS THE CASE MAY BE) AFTER FORMAL INVESTIGATION AND AFFIRMATIVE FINDINGS BY THE TARIFF COMMISSION (HEREINAFTER REFERRED TO AS “THE COMMISSION”), TO HAVE CAUSED OR THREATEN TO CAUSE MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR TO MATERIALLY RETARD

OR THREATEN TO MATERIALLY RETARD THE GROWTH OR THE ESTABLISHMENT OF A DOMESTIC INDUSTRY, A COUNTERVAILING DUTY EQUAL TO THE ASCERTAINED AMOUNT OF THE SUBSIDY SHALL BE LEVIED AND COLLECTED ON SUCH PRODUCT, COMMODITY OR ARTICLE AND ON IDENTICAL OR LIKE PRODUCT, COMMODITY OR ARTICLE THEREAFTER IMPORTED TO THE PHILIPPINES UNDER LIKE CIRCUMSTANCE, IN ADDITION TO ANY ORDINARY DUTIES, TAXES AND CHARGES IMPOSED BY LAW ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

“A. *INITIATION OF ACTION.* - ANY PERSON, WHETHER NATURAL OR JURIDICAL WHO HAS AN INTEREST TO PROTECT SHALL FILE A VERIFIED PETITION WITH THE SECRETARY, WHICH PETITION SHALL BE ACCOMPANIED BY DOCUMENTS IF ANY, WHICH ARE REASONABLY AVAILABLE TO THE PETITIONER AND WHICH CONTAIN INFORMATION SUPPORTING THE FACTS THAT ARE ESSENTIAL TO ESTABLISH THE PRESENCE OF THE ELEMENTS REQUIRED TO BE PRESENT FOR THE IMPOSITION OF A COUNTERVAILING DUTY, AND SHALL FURTHER STATE, AMONG OTHERS; 1) THE DOMESTIC INDUSTRY TO WHICH THE PETITIONER BELONGS AND THE PARTICULAR DOMESTIC PRODUCT, COMMODITY OR

1 ARTICLE OR CLASS OF DOMESTIC PRODUCT,
2 COMMODITY OR ARTICLE BEING PREJUDICED; 2) THE
3 NUMBER OF PERSONS EMPLOYED, THE TOTAL CAPITAL
4 INVESTED IN AND THE PRODUCTION AND SALES
5 VOLUME AND THE AGGREGATE PRODUCTION
6 CAPACITY OF THE DOMESTIC INDUSTRY THAT HAS
7 BEEN MATERIALLY INJURED OR THREATENED TO BE
8 MATERIALLY INJURED OR WHOSE GROWTH OR
9 ESTABLISHMENT HAS BEEN MATERIALLY RETARDED
10 OR THREATENED TO BE MATERIALLY RETARDED; 3)
11 THE NAME AND ADDRESS OF THE IMPORTER (OR THE
12 NAMES AND ADDRESSES OF THE IMPORTERS, IF THERE
13 ARE SEVERAL), THE ESTIMATED AGGREGATE OR
14 CUMULATIVE QUANTITY, THE PORT OR PORTS AND
15 THE DATE OR DATES OF ARRIVAL, THE IMPORT ENTRY
16 DECLARATIONS, THE VALUE PER IMPORT ENTRY
17 DECLARATION OF THE IMPORTED PRODUCT,
18 COMMODITY OR ARTICLE AND THE ESTIMATED
19 AMOUNT OF THE SUBSIDY THEREON; AND 4) SUCH
20 OTHER PARTICULARS, FACTS OR ALLEGATIONS AS
21 ARE NECESSARY TO JUSTIFY THE IMPOSITION OF
22 COUNTERVAILING DUTY ON THE IMPORTED PRODUCT,
23 COMMODITY OR ARTICLE.

24 "THE APPLICATION SHALL BE CONSIDERED TO
25 HAVE BEEN MADE 'BY OR ON BEHALF OF THE

1 DOMESTIC INDUSTRY' IF IT IS SUPPORTED BY THOSE
2 DOMESTIC PRODUCERS WHOSE COLLECTIVE OUTPUT
3 CONSTITUTES MORE THAN FIFTY PERCENT (50%) OF
4 THE TOTAL PRODUCTION OF THE LIKE PRODUCT
5 PRODUCED BY THAT PORTION OF THE DOMESTIC
6 INDUSTRY EXPRESSING EITHER SUPPORT FOR OR
7 OPPOSITION TO THE APPLICATION. HOWEVER, NO
8 INVESTIGATION SHALL BE INITIATED WHEN DOMESTIC
9 PRODUCERS EXPRESSLY SUPPORTING THE
10 APPLICATION ACCOUNT FOR LESS THAN TWENTY-
11 FIVE PERCENT (25%) OF TOTAL PRODUCTION OF THE
12 LIKE PRODUCT PRODUCED BY THE DOMESTIC
13 INDUSTRY.

14 "IN SPECIAL CIRCUMSTANCES, THE
15 AUTHORITIES CONCERNED ARE HEREBY AUTHORIZED
16 TO INITIATE AN INVESTIGATION WITHOUT HAVING
17 RECEIVED A WRITTEN APPLICATION BY OR ON BEHALF
18 OF A DOMESTIC INDUSTRY FOR THE INITIATION OF
19 SUCH INVESTIGATION IN THE EVENT AND ONLY IF
20 THEY HAVE SUFFICIENT EVIDENCE OF THE EXISTENCE
21 OF A SUBSIDY, INJURY AND CAUSAL LINK, TO JUSTIFY
22 THE INITIATION OF AN INVESTIGATION.

23 "B. NOTICE TO THE SECRETARY OF FINANCE. -
24 UPON HIS RECEIPT OF THE PETITION, THE SECRETARY
25 SHALL, WITHOUT DELAY, FURNISH THE SECRETARY

1 OF FINANCE WITH A COMPLETE COPY OF THE
2 PETITION, INCLUDING ITS ANNEXES, IF ANY, AND
3 REQUEST THE LATTER TO IMMEDIATELY INFORM THE
4 COMMISSIONER OF CUSTOMS REGARDING THE FILING
5 AND PENDENCY OF THE PETITION FOR THE
6 IMPOSITION OF COUNTERVAILING DUTY AND TO
7 INSTRUCT HIM TO GATHER, HOLD AND SECURE ALL
8 IMPORT ENTRIES COVERING SUCH ALLEGEDLY
9 SUBSIDIZED PRODUCT, COMMODITY OR ARTICLE
10 WITHOUT LIQUIDATION, AND TO WITHHOLD THE
11 RELEASE OF ANY OF SUCH PRODUCT, COMMODITY OR
12 ARTICLE UNLESS SO INSTRUCTED OTHERWISE IN
13 WRITING BY THE SECRETARY, AND TO SUBMIT TO THE
14 SECRETARY, THROUGH THE SECRETARY OF FINANCE,
15 A COMPLETE REPORT ON THE NUMBER, VOLUME, AND
16 VALUE OF THE IMPORTATION OF THE ALLEGEDLY
17 SUBSIDIZED PRODUCT, COMMODITY OR ARTICLE
18 WITHIN TEN (10) DAYS FROM RECEIPT BY THE
19 COMMISSIONER OF CUSTOMS OF THE INSTRUCTION
20 OF THE SECRETARY OF FINANCE, AND TO MAKE SUCH
21 SIMILAR ADDITIONAL REPORTS EVERY TEN (10) DAYS
22 THEREAFTER.

23 "C. NOTICE TO AND ANSWER OF THE IMPORTER.

24 - WITHIN FIVE (5) DAYS FROM HIS RECEIPT OF THE
25 PETITION, THE SECRETARY SHALL NOTIFY THE

1 IMPORTER AND SHALL FURNISH HIM WITH A COPY OF
2 THE PETITION AND ITS ANNEXES, IF ANY, EITHER BY
3 PERSONAL DELIVERY OR BY REGISTERED MAIL,
4 WHICHEVER IS MORE CONVENIENT AND EXPEDITIOUS.

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

18 "D. PRELIMINARY DETERMINATION. - NOT LATER
19 THAN TEN (10) DAYS FROM HIS RECEIPT OF THE
20 ANSWER OF THE RESPONDENT IMPORTER, THE
21 SECRETARY SHALL, ON THE BASIS OF THE PETITION
22 OF THE AGGRIEVED PARTY AND THE ANSWER OF THE
23 RESPONDENT IMPORTER AND THEIR RESPECTIVE
24 SUPPORTING DOCUMENTS OR INFORMATION, MAKE
25 A PRELIMINARY DETERMINATION WHETHER OR NOT

1 A *PRIMA FACIE* CASE EXISTS FOR THE IMPOSITION OF
2 A COUNTERVAILING DUTY ON THE ALLEGEDLY
3 SUBSIDIZED IMPORTED PRODUCT, COMMODITY OR
4 ARTICLE.

5 "UPON DETERMINATION BY THE SECRETARY OF
6 THE EXISTENCE OF A *PRIMA FACIE* CASE, HE SHALL,
7 WITHOUT DELAY, TRANSMIT THE RECORDS OF THE
8 CASE CONSISTING OF THE PETITION AND THE ANSWER,
9 INCLUDING ALL THE RELEVANT DOCUMENTS,
10 INFORMATION AND THE PERIODIC REPORTS OF THE
11 COMMISSIONER OF CUSTOMS, TO THE COMMISSION
12 FOR ITS IMMEDIATE FORMAL INVESTIGATION OF THE
13 CASE. THE SECRETARY SHALL, IN ADDITION,
14 IMMEDIATELY ISSUE, THROUGH THE SECRETARY OF
15 FINANCE, A WRITTEN INSTRUCTION TO THE
16 COMMISSIONER OF CUSTOMS AUTHORIZING THE
17 RELEASE OF THE ALLEGEDLY SUBSIDIZED IMPORTED
18 PRODUCT, COMMODITY OR ARTICLE UPON THE
19 PAYMENT OF THE CORRESPONDING ORDINARY
20 DUTIES, TAXES AND OTHER CHARGES IMPOSED BY
21 LAW ON SUCH PRODUCT, COMMODITY OR ARTICLE
22 AND UPON THE DEPOSIT WITH THE BUREAU OF
23 CUSTOMS OF A CASH BOND EQUAL TO THE
24 ESTIMATED COUNTERVAILING DUTY THAT MAY BE
25 IMPOSED UPON SUCH ALLEGEDLY SUBSIDIZED

1 IMPORTED PRODUCT, COMMODITY OR ARTICLE. THE
2 CASH BOND SHALL BE DEPOSITED WITH A
3 GOVERNMENT DEPOSITORY BANK AND SHALL BE HELD
4 IN TRUST FOR THE RESPONDENT IMPORTER.

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

12 "E. *INVESTIGATION BY THE COMMISSION.* -
13 IMMEDIATELY UPON ITS RECEIPT OF THE RECORDS
14 OF THE CASE FROM THE SECRETARY, THE
15 COMMISSION SHALL FORTHWITH SET THE CASE FOR
16 FORMAL INVESTIGATION AND SHALL ACCORDINGLY
17 NOTIFY IN WRITING THE AGGRIEVED PARTY AND THE
18 RESPONDENT IMPORTER AND, IN ADDITION, GIVE
19 PUBLIC NOTICE OF THE EXACT INITIAL DATE, TIME
20 AND PLACE OF THE FORMAL INVESTIGATION
21 THROUGH THE PUBLICATION OF SUCH PARTICULARS
22 AND A CONCISE SUMMARY OF THE PETITION IN TWO
23 (2) NEWSPAPERS OF GENERAL CIRCULATION.

24 "THE COMMISSION IS HEREBY AUTHORIZED TO
25 REQUIRE ANY INTERESTED PARTY TO ALLOW ACCESS

1 TO, OR OTHERWISE PROVIDE, NECESSARY
2 INFORMATION TO ENABLE THE COMMISSION TO
3 EXPEDITE THE INVESTIGATION.

4 IN CASES IN WHICH ANY INTERESTED PARTY
5 REFUSES ACCESS TO, OR OTHERWISE DOES NOT
6 PROVIDE, NECESSARY INFORMATION WITHIN A
7 REASONABLE PERIOD OF TIME OR SIGNIFICANTLY
8 IMPEDES THE INVESTIGATION, PRELIMINARY AND
9 FINAL DETERMINATIONS, AFFIRMATIVE OR NEGATIVE,
10 MAY BE MADE ON THE BASIS OF THE FACTS
11 AVAILABLE.

12 "IN THE FORMAL INVESTIGATION, THE
13 COMMISSION SHALL ESSENTIALLY DETERMINE: 1) THE
14 NATURE AND AMOUNT OF THE SUBSIDY BEING
15 ENJOYED BY THE IMPORTED PRODUCT, COMMODITY
16 OR ARTICLE IN QUESTION; 2) THE PRESENCE AND
17 EXTENT OF THE MATERIAL INJURY SUFFERED BY OR
18 THE PRESENCE AND DEGREE OF THE THREAT OF
19 MATERIAL INJURY TO THE AFFECTED DOMESTIC
20 INDUSTRY; AND 3) THE EXISTENCE OF A CAUSAL
21 RELATIONSHIP BETWEEN THE ALLEGEDLY SUBSIDIZED
22 IMPORTED PRODUCT, COMMODITY OR ARTICLE AND
23 THE MATERIAL INJURY OR THREAT OF MATERIAL
24 INJURY TO THE AFFECTED DOMESTIC INDUSTRY.

25 "THE FORMAL INVESTIGATION SHALL BE

1 CONDUCTED IN A SUMMARY MANNER. NO DILATORY
2 TACTICS NOR UNNECESSARY OR UNJUSTIFIED
3 DELAYS SHALL BE ALLOWED, AND THE TECHNICAL
4 RULES OF EVIDENCE SHALL NOT BE APPLIED
5 STRICTLY.

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

11 "F. DETERMINATION OF THE EXISTENCE OF
12 SUBSIDY.- A SUBSIDY IS DEEMED TO EXIST WHEN THE
13 GOVERNMENT OR ANY PUBLIC BODY IN THE COUNTRY
14 OF ORIGIN OR EXPORTATION OF THE IMPORTED
15 PRODUCT, COMMODITY OR ARTICLE EXTENDS
16 FINANCIAL CONTRIBUTION TO THE PRODUCER, A
17 MANUFACTURER OR EXPORTER OF SUCH PRODUCT,
18 COMMODITY OR ARTICLE IN THE FORMS OF 1) DIRECT
19 TRANSFER OF FUNDS SUCH AS GRANTS, LOANS OR
20 EQUITY INFUSION, OR 2) POTENTIAL DIRECT
21 TRANSFER OF FUNDS SUCH AS LOAN GUARANTEES,
22 OR 3) FORGONE OR UNCOLLECTED GOVERNMENT
23 REVENUE THAT IS OTHERWISE DUE FROM THE
24 PRODUCER, MANUFACTURER OR EXPORTER OF THE
25 PRODUCT, COMMODITY OR ARTICLE, OR 4) GOODS OR

SERVICES OTHER THAN GENERAL INFRASTRUCTURE PROVIDED BY THE GOVERNMENT IN THE COUNTRY OF ORIGIN OR EXPORTATION TO THE PRODUCER, MANUFACTURER OR EXPORTER, OR 5) PURCHASES OF GOODS FROM THE PRODUCER, MANUFACTURER OR EXPORTER BY THE GOVERNMENT OF THE COUNTRY OF ORIGIN OR EXPORTATION IN ORDER TO STRENGTHEN THE COMPETITIVE ECONOMIC AND FINANCIAL CAPACITY OF SUCH PRODUCER, MANUFACTURER OR EXPORTER, OR 6) WHEN THE GOVERNMENT IN THE COUNTRY OF ORIGIN OR EXPORTATION MAKES PAYMENTS TO A FUNDING MECHANISM, OR ENTRUSTS OR DIRECTS A PRIVATE BODY TO CARRY OUT ONE OR MORE OF THE ACTIVITIES MENTIONED IN THE PRECEDING NUMBERS, OR 7) WHEN THERE IS ANY FORM OF INCOME OR PRICE SUPPORT GIVEN DIRECTLY OR INDIRECTLY BY THE GOVERNMENT OR ANY PUBLIC BODY IN THE COUNTRY OF ORIGIN OR EXPORTATION TO THE PRODUCER, MANUFACTURER OR EXPORTER OF THE IMPORTED PRODUCT, COMMODITY OR ARTICLE OR SUCH OTHER SCHEMES AND DEVICES WHICH MAY BE CONSIDERED AS SUBSIDIES AS DEFINED IN THIS ACT.

"G. DETERMINATION OF MATERIAL INJURY. - THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE

PRESENCE AND DEGREE OF THE THREAT OF MATERIAL INJURY TO DOMESTIC INDUSTRY OR TO THE GROWTH OF A NASCENT ENTERPRISE BECAUSE OF THE SUBSIDIZED IMPORTS, SHALL BE DETERMINED BY THE COMMISSION ON THE BASIS OF POSITIVE EVIDENCE AND SHALL REQUIRE AN OBJECTIVE EXAMINATION OF 1) THE VOLUME OF THE SUBSIDIZED IMPORTS, THAT IS, WHETHER THERE HAS BEEN A SIGNIFICANT INCREASE IN SUBSIDIZED IMPORTS, EITHER IN ABSOLUTE TERMS OR RELATIVE TO PRODUCTION OR CONSUMPTION IN THE DOMESTIC MARKET; 2) THE EFFECT OF THE SUBSIDIZED IMPORTS ON PRICES IN THE DOMESTIC MARKET FOR LIKE PRODUCT, COMMODITY OR ARTICLE, THAT IS, WHETHER THERE HAS BEEN A SIGNIFICANT PRICE UNDERCUTTING BY THE SUBSIDIZED IMPORTS AS COMPARED WITH THE PRICE OF A LIKE PRODUCT, COMMODITY OR ARTICLE IN THE DOMESTIC MARKET, OR WHETHER THE EFFECT OF SUCH IMPORTS IS OTHERWISE TO DEPRESS PRICES TO A SIGNIFICANT DEGREE OR TO PREVENT PRICE INCREASES, WHICH OTHERWISE WOULD HAVE OCCURRED, TO A SIGNIFICANT DEGREE; AND 3) THE RESULTING EFFECT OF THE SUBSIDIZED IMPORTS ON THE DOMESTIC PRODUCERS OR MANUFACTURERS OF LIKE PRODUCT,

1 COMMODITY OR ARTICLE, INCLUDING AN
2 EVALUATION OF ALL RELEVANT ECONOMIC FACTORS
3 AND INDICES HAVING A BEARING ON THE STATE OF
4 THE DOMESTIC INDUSTRY CONCERNED, SUCH AS, BUT
5 NOT LIMITED TO, ACTUAL AND POTENTIAL DECLINE
6 IN OUTPUT, SALES, MARKET SHARE, PROFITS,
7 PRODUCTIVITY, RETURN ON INVESTMENTS, OR
8 UTILIZATION OF CAPACITY; OTHER FACTORS
9 AFFECTING DOMESTIC PRICES; THE ACTUAL OR
10 POTENTIAL NEGATIVE EFFECTS OF SUCH SUBSIDIZED
11 IMPORTS ON THE CASH FLOW, INVENTORIES,
12 EMPLOYMENT, WAGES, GROWTH, ABILITY TO RAISE
13 CAPITAL OR INVESTMENT IN THE AFFECTED
14 DOMESTIC INDUSTRY; THE VOLUMES AND PRICES OF
15 NON-SUBSIDIZED IMPORTS OF THE PRODUCT,
16 COMMODITY OR ARTICLE IN QUESTION;
17 CONTRACTION IN DOMESTIC DEMAND OR CHANGES
18 IN THE PATTERNS OF DOMESTIC CONSUMPTION;
19 TRADE RESTRICTIVE PRACTICES OF AND COMPETITION
20 BETWEEN THE FOREIGN AND DOMESTIC PRODUCERS
21 OR MANUFACTURERS; DEVELOPMENT OF
22 TECHNOLOGY AND THE PRODUCTIVITY OF THE
23 DOMESTIC INDUSTRY; ANY KNOWN FACTORS OTHER
24 THAN THE SUBSIDIZED IMPORTS WHICH AT THE SAME
25 TIME ARE INJURING THE DOMESTIC INDUSTRY; AND,

1 IN THE CASE OF AGRICULTURE, WHETHER THERE HAS
2 BEEN AN INCREASED BURDEN ON THE SUPPORT
3 PROGRAMS OF THE NATIONAL GOVERNMENT.

4 "IN THE CASE WHERE THE EFFECT OF THE
5 SUBSIDIZED IMPORT WILL MATERIALLY RETARD OR
6 THREATEN TO MATERIALLY RETARD THE GROWTH
7 OF A DOMESTIC INDUSTRY, INFORMATION ON NUMBER
8 OF PERSONS EMPLOYED, TOTAL CAPITAL INVESTED IN
9 AND THE PRODUCTION AND SALES VOLUME AND THE
10 AGGREGATE PRODUCTION CAPACITY OF SAID
11 DOMESTIC INDUSTRY CAN BE AUGMENTED OR
12 SUBSTITUTED BY A SHOWING, IN THE FORM OF A
13 FACTUAL STUDY REPORT OR OTHER DATA/
14 INFORMATION WHICH SUPPORTS THE CLAIM THAT
15 AN INDUSTRY WHICH HAS POTENTIAL TO GROW
16 DOMESTICALLY IS ADVERSELY AFFECTED BY THE
17 SUBSIDIZED IMPORT.

18 "FOR THIS PURPOSE, THE DEPARTMENT OF
19 TRADE AND INDUSTRY FOR NON-AGRICULTURAL
20 PRODUCTS AND THE DEPARTMENT OF AGRICULTURE
21 FOR AGRICULTURAL PRODUCTS SHALL CONDUCT
22 CONTINUING STUDIES TO IDENTIFY AND DETERMINE
23 THE SPECIFIC INDUSTRY OR INDUSTRIES, WHETHER
24 LOCALLY EXISTING OR NOT, WHICH HAVE THE
25 POTENTIAL TO GROW OR BE ESTABLISHED

1 DOMESTICALLY AND WHOSE GROWTH OR
2 ESTABLISHMENT WILL BE RETARDED OR PREVENTED
3 BY A SUBSIDIZED IMPORT.

4 "H. *CUMULATION OF IMPORTS*. - WHEN IMPORTS
5 OF PRODUCTS, COMMODITIES OR ARTICLES FROM
6 MORE THAN ONE COUNTRY ARE SIMULTANEOUSLY
7 THE SUBJECT OF AN INVESTIGATION FOR THE
8 IMPOSITION OF COUNTERVAILING DUTY, THE
9 COMMISSION MAY CUMULATIVELY ASSESS THE
10 EFFECTS OF SUCH IMPORTS ONLY IF THE COMMISSION
11 IS CONVINCED THAT 1) THE AMOUNT OF
12 SUBSIDIZATION ESTABLISHED IN RELATION TO THE
13 IMPORTS FROM EACH COUNTRY IS MORE THAN *DE*
14 *MINIMIS* AS DEFINED IN EXISTING INTERNATIONAL
15 TRADE AGREEMENTS OF WHICH THE REPUBLIC OF
16 THE PHILIPPINES IS A PARTY; 2) THE VOLUME OF
17 SUCH IMPORTS FROM EACH COUNTRY IS NOT
18 NEGLIGIBLE; AND 3) A CUMULATIVE ASSESSMENT OF
19 THE EFFECTS OF SUCH IMPORTS IS WARRANTED IN
20 THE LIGHT OF THE CONDITIONS OF COMPETITION
21 BETWEEN THE IMPORTED PRODUCTS, COMMODITIES
22 OR ARTICLES AND THE CONDITIONS OF COMPETITION
23 BETWEEN THE IMPORTED PRODUCTS, COMMODITIES
24 OR ARTICLES AND THE LIKE DOMESTIC PRODUCTS,
25 COMMODITIES OR ARTICLES.

1 "I. THE COMMISSION SHALL, BEFORE A FINAL
2 DETERMINATION IS MADE, INFORM ALL THE
3 INTERESTED PARTIES OF THE ESSENTIAL FACTS
4 UNDER CONSIDERATION WHICH FORM THE BASIS FOR
5 THE DECISION TO APPLY DEFINITIVE MEASURES. SUCH
6 DISCLOSURE SHOULD TAKE PLACE IN SUFFICIENT TIME
7 FOR THE PARTIES TO DEFEND THEIR INTERESTS.

8 "J. *IMPOSITION OF COUNTERVAILING DUTY*. - THE
9 SECRETARY, SHALL WITHIN TEN (10) DAYS FROM HIS
10 RECEIPT OF THE FAVORABLE REPORT OF THE
11 COMMISSION, ISSUE A DEPARTMENT ORDER IMPOSING
12 THE COUNTERVAILING DUTY ON THE SUBSIDIZED
13 IMPORTED PRODUCT, COMMODITY OR ARTICLE.

14 "IN CASE OF A FAVORABLE REPORT OF THE
15 COMMISSION, THE CASH BOND SHALL BE APPLIED TO
16 THE COUNTERVAILING DUTY ASSESSED. IF THE CASH
17 BOND IS IN EXCESS OF THE COUNTERVAILING DUTY
18 ASSESSED, THE REMAINDER SHALL BE RETURNED TO
19 THE IMPORTER IMMEDIATELY: *PROVIDED*, THAT NO
20 INTEREST SHALL BE PAYABLE BY THE GOVERNMENT
21 ON THE AMOUNT TO BE RETURNED. IF THE CASH
22 BOND IS NOT ENOUGH TO COVER THE COUNTERVAILING
23 DUTY ASSESSED, THE RESPONDENT IMPORTER SHALL
24 BE IMMEDIATELY ASSESSED FOR THE DEFICIENCY AND
25 SHALL PAY THE SAME WITHIN FIFTEEN (15) DAYS

FROM HIS RECEIPT OF THE DEFICIENCY ASSESSMENT.

"IF THE RULING OF THE SECRETARY IN A PETITION FOR A COUNTERVAILING DUTY IS UNFAVORABLE TO THE PETITIONER, THE SECRETARY SHALL, AFTER THE LAPSE OF THE PERIOD FOR THE PETITIONER TO APPEAL TO THE COURT OF TAX APPEALS, ISSUE, THROUGH THE SECRETARY OF FINANCE, A DEPARTMENT ORDER FOR THE IMMEDIATE RELEASE OF THE CASH BOND TO THE IMPORTER.

"K. DURATION AND REVIEW OF COUNTERVAILING DUTY. - AS A GENERAL RULE, ANY IMPOSITION OF COUNTERVAILING DUTY SHALL REMAIN IN FORCE ONLY AS LONG AS AND TO THE EXTENT NECESSARY TO COUNTERACT A SUBSIDIZATION WHICH IS CAUSING OR THREATENING TO CAUSE MATERIAL INJURY.

"HOWEVER, THE NEED FOR THE CONTINUED IMPOSITION OF THE COUNTERVAILING DUTY MAY BE REVIEWED BY THE COMMISSION, WHEN WARRANTED, UPON DIRECTION OF THE SECRETARY.

"ANY INTERESTED PARTY MAY ALSO PETITION THE SECRETARY FOR A REVIEW OF THE CONTINUED IMPOSITION OF THE COUNTERVAILING DUTY: *PROVIDED*, THAT AT LEAST SIX (6) MONTHS HAS ELAPSED SINCE THE IMPOSITION OF THE

COUNTERVAILING DUTY, AND UPON SUBMISSION OF POSITIVE INFORMATION SUBSTANTIATING THE NEED FOR A REVIEW. INTERESTED PARTIES SHALL HAVE THE RIGHT TO REQUEST THE SECRETARY TO EXAMINE (1) WHETHER THE CONTINUED IMPOSITION OF THE COUNTERVAILING DUTY IS NECESSARY TO OFFSET THE SUBSIDIZATION; AND (2) WHETHER THE INJURY WOULD LIKELY CONTINUE OR RECUR IF THE COUNTERVAILING DUTY WERE REMOVED OR MODIFIED, OR BOTH.

"IF AS A RESULT OF THE REVIEW BY THE COMMISSION, THE SECRETARY DETERMINES THAT THE COUNTERVAILING DUTY IS NO LONGER NECESSARY OR WARRANTED, THE IMPOSITION OF THE COUNTERVAILING DUTY SHALL BE TERMINATED IMMEDIATELY AND ALL PARTIES CONCERNED SHALL BE NOTIFIED ACCORDINGLY OF SUCH TERMINATION, INCLUDING AND ESPECIALLY THE COMMISSIONER OF CUSTOMS THROUGH THE SECRETARY OF FINANCE.

"NOTWITHSTANDING THE PROVISIONS OF THE PRECEDING PARAGRAPHS OF THIS SECTION, ANY COUNTERVAILING DUTY SHALL BE TERMINATED ON A DATE NOT LATER THAN FIVE (5) YEARS FROM THE DATE OF ITS IMPOSITION (OR FROM THE DATE OF THE MOST RECENT REVIEW IF THAT REVIEW HAS

1 COVERED BOTH SUBSIDIZATION AND MATERIAL
2 INJURY), UNLESS THE COMMISSION HAS DETERMINED,
3 IN A REVIEW INITIATED AT LEAST SIX (6) MONTHS
4 PRIOR TO THE TERMINATION DATE UPON THE
5 DIRECTION OF THE SECRETARY OR UPON A DULY
6 SUBSTANTIATED REQUEST MADE BY OR ON BEHALF
7 OF THE AFFECTED DOMESTIC INDUSTRY, THAT THE
8 TERMINATION OF THE COUNTERVAILING DUTY WOULD
9 LIKELY LEAD TO THE CONTINUATION OR RECURRENCE
10 OF THE SUBSIDIZATION AND MATERIAL INJURY.

11 "THE PROCEDURE AND EVIDENCE GOVERNING
12 THE DISPOSITION OF THE PETITION FOR THE
13 IMPOSITION OF COUNTERVAILING DUTY SHALL APPLY
14 WITH EQUAL MEASURE TO ANY REVIEW CARRIED OUT
15 UNDER THIS SECTION, AND ANY SUCH REVIEW SHALL
16 BE CARRIED OUT EXPEDITIOUSLY AND SHALL BE
17 CONCLUDED NOT LATER THAN ONE HUNDRED FIFTY
18 (150) DAYS FROM THE DATE OF THE INITIATION OF
19 SUCH A REVIEW.

20 "L. JUDICIAL REVIEW. - ANY INTERESTED PARTY
21 WHO IS ADVERSELY AFFECTED BY A FINAL RULING OF
22 THE SECRETARY IN CONNECTION WITH THE
23 IMPOSITION OF COUNTERVAILING DUTY MAY FILE
24 WITH THE COURT OF TAX APPEALS, EITHER BY
25 PERSONAL DELIVERY OR BY REGISTERED MAIL, A

1 PETITION FOR THE REVIEW OF SUCH RULING WITHIN
2 THIRTY (30) DAYS FROM HIS RECEIPT OF NOTICE OF
3 THE FINAL RULING OF THE SECRETARY: *PROVIDED*,
4 *HOWEVER*, THAT THE FILING OF SUCH PETITION FOR
5 REVIEW SHALL NOT IN ANY WAY STOP, SUSPEND OR
6 OTHERWISE TOLL THE IMPOSITION AND COLLECTION
7 OF THE COUNTERVAILING DUTY ON THE IMPORTED
8 PRODUCT, COMMODITY OR ARTICLE.

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

15 "M. *COSTS OF SUIT.* - THE COSTS OF THE
16 PROCEEDINGS, INCLUDING THE FORMAL
17 INVESTIGATION BY THE COMMISSION, SHALL BE
18 BORNE BY THE LOSING PARTY."

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

24 SEC. 3. *Separability Clause.* - If any of the provisions of this
25 Act is declared invalid by a competent court, the remainder of this Act

1 or any provision not affected by such declaration of invalidity shall
2 remain in force and effect.

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

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

Approved,