

WORLD TRADE
ORGANIZATION

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(95-3429)

Committee on Anti-Dumping Practices

Original: English

NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

PHILIPPINES

The following communication, dated 9 October 1995, has been received from the Permanent Mission of the Philippines.

In accordance with Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994, I have the honour to notify Republic Act No. 7843, the Anti-Dumping Law of the Philippines.

Republic of the Philippines
Congress of the Philippines
Metro Manila

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-fifth day of July, nineteen hundred and ninety-four.

[Republic Act No. -7843-]

AN ACT RATIONALIZING AND STRENGTHENING THE PROVISIONS ON ANTI-DUMPING, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK I OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED.

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

SECTION 1. This Act shall be known as the "Anti-Dumping Act of 1994".

SECTION 2. It is hereby declared the policy of the State to protect Filipino enterprises against unfair foreign competition and trade practices. Towards this end, substantive and procedures and remedies available to Filipino enterprises shall be strengthened and made responsive to recent developments in world trade.

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

Part 2. Special Duties

SEC. 301 *Dumping Duty.* -

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

Pending determination of a *prima facie* case of dumping, the petitioner may petition that the release from the Bureau of Customs of the alleged dumped product be withheld. If the Secretary determines that on the face of the petition and documents presented, there exists an imminent danger of injury to a particular industry as a result of the alleged dumping, he shall direct the Commissioner of Customs to hold the release of the questioned importation, upon filing by the petitioner of a bond equal to the alleged margin of dumping. The bond shall answer for damages which the importer may suffer as a result of the holding of the release of the questioned importation, in case

the Secretary finds that there is no *prima facie* case. However, the petitioner's liability for damages shall not exceed the amount of his bond. This bond shall be cancelled once a *prima facie* case has been determined by the Secretary. The Secretary may, *motu proprio*, hold the release of the questioned articles based on his information that an imminent danger of injury exists to a particular industry as a result of the alleged dumping.

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

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

(b) The Commission upon receipt of the advice from the Secretary shall conduct an investigation to:

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

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

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

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

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

3. Determine if, as a result thereof, a domestic industry producing like articles in the Philippines suffers, or will be threatened with, injury, or will suffer a material retardation of the establishment of a domestic industry in the Philippines: *Provided*, that in determining whether the domestic industry has suffered or is being threatened with injury, the Commission shall determine whether the wholesale prices at which the domestic articles are sold are reasonable, taking into account the cost of raw materials, labour, overhead, a fair return on investment and

the overall efficiency of the industry; and/or whether a further importation of such articles and/or like articles are clearly foreseen and imminent considering such relevant factors as:

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

(b) Reasonable likelihood of increased importations; or

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

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

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

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

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

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

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

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

C. The Commission shall terminate its investigation within ninety (90) days from receipt of the aforesaid advice and shall submit its findings to the Special Committee on Anti-Dumping (hereinafter referred to as "Special Committee") within sixty (60) days from the termination of its investigation: *Provided*, that the Commission shall give notice to interested parties of such findings submitted to the special committee.

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

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

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

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

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

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

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

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

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

J. (1) The article, if it has not been previously released under cash bonds as provided for in sub-section "F" hereof, shall be released after payment by the party concerned of the corresponding dumping duty in addition to any ordinary duties, taxes, and charges, if any, or reexported by the owner, importer, consignee or agent, at his option and expense, upon the filing of a cash bond in an amount not less than the provisionally estimated difference between the actual export price and the normal value plus the

applicable regular duty conditioned upon presentation of landing certificate issued by a consular officer of the Philippines at the country of destination; or

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

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

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

The Philippine Finance Attache or, in the absence thereof, the Commercial Attache or, Trade Attache or, in the absence thereof, the diplomatic officer or consular officer abroad shall be advised by the Special Committee of any article covered by dumping decision. The concerned Attache or the Officer shall submit quarterly report on normal values of said articles to the Special Committee.

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

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

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

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

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

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

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

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

permit the manufacture or production of the particular article under consideration in the usual course of business;

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 4 *Separability Clause.* - If, for any reason, any section or provision of this Act or the application of such section or provision to any person or circumstance is declared unconstitutional or invalid, no other section or provision of this Act shall be affected thereby.

SEC. 5 *Repealing Clause.* - Section 301, Part 2, Title II, Book I of the Tariff and Customs Code, as amended, Presidential Decree No. 1999, Executive Order No. 1073, and all other laws, orders, decrees, issuances, rules and regulations related to dumping which are inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 6 This Act shall take effect two (2) days after its publication in the *Official Gazette* or in at least two (2) national newspapers of general circulation whichever comes earlier.

Approved,

EDGARDO J. ANGARA
President of the Senate

JOSE DE VENECIA, JR.
Speaker of the House of Representatives

This Act which originated in the House of Representatives was finally passed by the House of Representatives and the Senate on 19 December 1994.

EDGARDO E. TUMANGAN
Secretary of the Senate

CAMILO L. SABIO
*Secretary General
House of Representatives*

Approved: 21 December 1994

FIDEL V. RAMOS
President of the Philippines