

[REPUBLIC ACT NO. 8752, August 12, 1999]

**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:*

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

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

SEC. 3. Section 301, Part 2, Title II, Book I 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. Anti-Dumping Duty. -

"(a) Whenever any product, commodity or article of commerce imported into the Philippines at an export price less than its normal value in the ordinary course of trade for the like product, commodity or article destined for consumption in the exporting country is causing or is threatening to cause material injury to a domestic industry, or materially retarding the establishment of a domestic industry producing the like product, the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, or the Secretary of Agriculture, in the case of agricultural product, commodity or article (both of whom are hereinafter referred to as the Secretary, as the case may be), after formal investigation and affirmative finding of the Tariff Commission (hereinafter referred to as the Commission), shall cause the imposition of an anti-dumping duty equal to the margin of dumping on such product, commodity or article and on like product, commodity or article thereafter imported to the Philippines under similar circumstances, in addition to ordinary duties, taxes and charges imposed by law on the imported product, commodity or article. However, the anti-dumping duty may be less than the margin if such lesser duty will be adequate to remove the injury to the domestic industry. Even when all the requirements for the imposition have been fulfilled, the decision on whether or not to impose a definitive anti-dumping duty remains the prerogative of the Commission. It

may consider, among others, the effect of imposing an anti-dumping duty on the welfare of consumers and/or the general public, and other related local industries.

"In the case where products are not imported directly from the country of origin but are exported to the Philippines from an intermediate country, the price at which the products are sold from the country of export to the Philippines shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if for example, the products are merely transhipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

"(b) *Initiation of Action.* - An anti-dumping investigation may be initiated upon receipt of a written application from any person whether natural or juridical, representing a domestic industry, which shall include evidence of: a) dumping, b) injury, and c) causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following: 1) the identity of the applicant and a description of the volume and the value of the domestic production of the like product of the applicant; 2) a complete description of the alleged dumped product, the name of the country of origin or export under consideration, the identity of each known exporter or foreign producer, and a list of known persons importing the product under consideration; 3) information on the normal value of the product under consideration in the country of origin or export; and 4) information on the evolution of the volume of the alleged dumped imports, the effect of these imports on the price of the like product in the domestic market, and the consequent impact of the imports on the domestic industry.

"Philippine Trade, Agriculture or Finance Attachés and other Consular Officials or Attachés in the concerned exporting member countries are mandated to furnish the applicant pertinent information or documents to support his complaint within a period not exceeding thirty (30) days from receipt of a request.

"The application shall be filed with the Secretary of Trade and Industry in the case of non-agricultural product, commodity or article, or with the Secretary of Agriculture in the case of agricultural product, commodity or article. The Secretary shall require the petitioner to post a surety bond in such reasonable amount as to answer for any and all damages which the importer may sustain by reason of the filing of a frivolous petition. He shall immediately release the surety bond upon making an affirmative preliminary determination."

"The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than fifty percent (50%) of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. In cases involving an exceptionally large number of producers, the degree of support and opposition may be determined by using a statistically valid sampling

technique or by consulting their representative organizations. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than twenty-five percent (25%) of total production of the like product produced by the domestic industry.

"In exceptional circumstances, the Philippines may be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market have the dominant market share; and (b) the demand in that market is not substantially supplied by other producers elsewhere in the Philippines.

"If, in special circumstances, the Secretary decides to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, he shall proceed only if he has sufficient evidence of dumping, injury and a causal link, to justify the initiation of an investigation.

"Within five (5) working days from receipt of a properly documented application, the Secretary shall examine the accuracy and adequacy of the petition to determine whether there is sufficient evidence to justify the initiation of investigation. If there is no sufficient evidence to justify initiation, the Secretary shall dismiss the petition and properly notify the Secretary of Finance, the Commissioner of Customs, and other parties concerned regarding such dismissal. The Secretary shall extend legal, technical, and other assistance to the concerned domestic producers and their organizations at all stages of the anti-dumping action.

"(c) *Notice to the Secretary of Finance.* - Upon receipt of the application, the Secretary shall, without delay, notify the Secretary of Finance and furnish him with a complete copy of the application, or information in case the initiation is made on his own motion including its annexes, if any. The Secretary of Finance shall immediately inform the Commissioner of Customs regarding the filing and pendency of the application or information and instruct him to gather and to furnish the Secretary within five (5) days from receipt of the instructions of the Secretary of Finance copies of all import entries and relevant documents covering such allegedly dumped product, commodity or article which entered the Philippines during the last twelve (12) months preceding the date of application. The Commissioner of Customs shall also make such similar additional reports on the number, volume, and value of the importation of the allegedly dumped product, commodity or article to the Secretary every ten (10) days thereafter.

"(d) *Notice to Exporting Member-Country.* - Upon receipt of a properly documented application and before proceeding to initiate an investigation, the Secretary shall notify the government of the exporting country about the impending anti-dumping investigation. However, the Secretary shall refrain from publicizing the application for the initiation of the investigation before a decision has been made to initiate an investigation.

"(e) *Notice to Concerned Parties and Submission of Evidences.* - Within two (2) days from initiation of the investigation and after having notified the exporting country, the Secretary shall identify all interested parties, i.e., protestee-

importer, exporter and/or foreign producer, notify and require them to submit within thirty (30) days from receipt of such notice evidences and information or reply to the questionnaire to dispute the allegations contained in the application. At this point, the respondent is given the opportunity to present evidences to prove that he is not involved in dumping. He shall furnish them with a copy of the application and its annexes subject to the requirement to protect confidential information. The notice shall be deemed to have been received five (5) days from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting member, or an official representative of the exporting territory. If the respondent fails to submit his answer, he shall be declared in default, in which case, the Secretary shall make such preliminary determination of the case on the basis of the information available, among others, the facts alleged in the petition and the supporting information and documents supplied by the petitioner.

"(f) *Preliminary Determination.* - Not later than thirty (30) working days from receipt of the answer of the respondent importer, exporter, foreign producer, exporting member- country, and other interested parties, the Secretary shall, on the basis of the application of the aggrieved party and the answer of the respondent/s and their respective supporting documents or information, make a preliminary determination of the application for the imposition of an anti-dumping duty.

"In the preliminary determination, the Secretary shall essentially determine the following:

"(1) Price difference between the export price and the normal value of the article in question in the country of export or origin;

"(2) The presence and extent of material injury or threat of injury to the domestic industry producing like product or the material retardation of the establishment of a domestic industry; and

"(3) The causal relationship between the allegedly dumped product, commodity or article and the material injury or threat of material injury to the affected domestic industry or material retardation of the establishment of the domestic industry.

"The preliminary finding of the Secretary, together with the records of the case shall, within three (3) days, be transmitted by the Secretary to the Commission for its immediate formal investigation. In case his preliminary finding is affirmative, the burden of proof is shifted to the respondent to rebut the preliminary finding. The Secretary shall immediately issue, through the Secretary of Finance, written instructions to the Commissioner of Customs to impose within three (3) days from receipt of instructions a cash bond equal to the provisionally estimated antidumping duty but not greater than the provisionally estimated margin of dumping in addition to any other duties, taxes and charges imposed by law on like articles. The cash bond shall be deposited with the government depository bank and shall be held in trust for the respondent. Moreover, the posting of the cash bond shall only be required no sooner than sixty (60) days from the date of initiation of the investigation.

The date of initiation of the investigation is deemed to be the date the Secretary publishes such notice in two (2) newspapers of general circulation. The Secretary shall cause such publication immediately after a decision to initiate the investigation has been made. The provisional anti-dumping duty may only be imposed for a four (4)-month period which may be extended to six (6) months upon request by the exporter/s representing a significant percentage of the trade involved. However, a provisional anti-dumping duty lower than the provisionally estimated margin of dumping can be imposed for a period of six (6) to nine (9) months, if it is deemed sufficient to remove or prevent the material injury.

"(g) *Termination of Investigation.* - The Secretary or the Commission, as the case may be, shall motu proprio terminate the investigation at any stage of the proceedings if the provisionally estimated margin of dumping is less than two percent (2%) of export price or the volume of dumped imports or injury is negligible. The volume of dumped imports from a particular country shall normally be regarded as negligible if it accounts for less than three percent (3%) of the imports of the like article in the Philippines unless countries which individually account for less than three percent (3%) of the imports of the like article in the Philippines collectively account for more than seven percent (7%) of the total imports of that article.

"(h) *Investigation of the Commission.* - Within three (3) working days upon its receipt of the records of the case from the Secretary, the Commission shall start the formal investigation and shall accordingly notify in writing all parties on record and, in addition, give public notice of the exact initial date, time and place of the formal investigation through the publication of such particulars and a concise summary of the petition in two (2) newspapers of general circulation.

"In the formal investigation, the Commission shall essentially determine the following:

"(1) If the article in question is being imported into, or sold in the Philippines at a price less than its normal value; and the difference, if any, between the export price and the normal value of the article.

"(2) The presence and extent of material injury or the threat thereof to the domestic industry, or the material retardation of the establishment of a domestic industry;

"(3) The existence of a causal relationship between the allegedly dumped product, commodity or article and the material injury or threat of material injury to the affected domestic industry, or material retardation of the establishment of a domestic industry;

"(4) The anti-dumping duty to be imposed; and

"(5) The duration of the imposition of the anti-dumping duty.

"The Commission is hereby authorized to require any interested party to allow its access to or otherwise provide necessary information to enable the