

**[ REPUBLIC ACT NO. 8751, August 07, 1999 ]**

**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:*

Section 1. 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, is hereby further amended to read as follows:

"SEC. 302. Countervailing Duty. -

"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 caused or threatens to cause material injury to a domestic industry or has materially retarded the growth or prevents the establishment of a domestic industry as determined by the Tariff Commission (hereinafter referred to as the 'Commission'), the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, or 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) shall issue a department order imposing a countervailing duty equal to the ascertained amount of the subsidy. The same levy shall be imposed on like product, commodity or article thereafter imported to the Philippines under similar circumstances. The countervailing duty shall be in addition to any ordinary duties, taxes and charges imposed by law on such imported product, commodity or article.

"(A) *Initiation of Action.* - A countervailing action may be initiated by the following:

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

"(2) The Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, in special circumstances where there is sufficient evidence of an existence of a subsidy, injury and causal link.

"(B) *Requirements.* - A petition shall be filed with the Secretary and 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 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 article or class of domestic product, commodity or article being prejudiced;

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

"(3) The name and address of the known importer, exporter, or foreign producer, the country of origin or export, the estimated aggregate or cumulative quantity, the port and the date of arrival, the import entry declaration of the imported product, commodity or article, as well as the nature, the extent and the estimated amount of the subsidy thereon; and

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

"A petition for the imposition of a countervailing duty 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. However, an investigation shall be initiated only when domestic producers supporting the application account for at least twenty-five percent (25%) of the total production of like product produced by the domestic industry. In cases involving an exceptionally large number of producers, degree of support or opposition may be determined by using statistically valid sampling techniques or by consulting their representative organizations.

"Within ten (10) days from his receipt of the petition or information, the Secretary shall review the accuracy and adequacy of the information or evidence provided in the petition to determine whether there is sufficient basis to justify the initiation of an investigation. If there is no sufficient basis to justify the initiation of an investigation, the Secretary shall dismiss the petition and shall 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 countervailing action.

"(C) *Notice to the Secretary of Finance.* - Upon his receipt of the petition, the Secretary shall, without delay, furnish the Secretary of Finance with a summary of the essential facts of the petition, and request the latter to immediately inform the Commissioner of Customs regarding such petition and to instruct him to gather and secure all import entries covering such allegedly subsidized product, commodity or article without liquidation. The Commissioner of Customs shall submit to the Secretary a complete report on the number, volume, and value of the importation of the allegedly subsidized product, commodity or article within ten (10) days from his receipt of the instruction from the Secretary of Finance, and to make similar additional reports every ten (10) days thereafter.

"(D) *Notice to and Answer of Interested Parties.* - Within five (5) days from finding of the basis to initiate an investigation, the Secretary shall notify all interested parties, and shall furnish them with a copy of the petition and its annexes, if any. The interested parties shall, not later than thirty (30) days from their receipt of the notice, submit their answer, including such relevant evidence or information as is reasonably available to them to controvert the allegations of the petition. If they fail to submit their answer, the Secretary shall make such preliminary determination of the case on the basis of the facts and/or information available.

"The Secretary shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the petition. However, after receipt of a properly documented petition and before proceeding to initiate an investigation, he shall notify the government of the exporting country about the impending investigation.

"(E) *Preliminary Determination.* - Within twenty (20) days from his receipt of the answer of the interested parties, the Secretary shall, on the basis of the petition of the aggrieved party and the answer of such interested parties and their respective supporting documents or information, make a preliminary determination on whether or not *prima facie* case exists for the imposition of a provisional countervailing duty in the form of a cash bond equal to the provisionally estimated amount of subsidy. Upon finding of a *prima facie* case, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs to collect the cash bond, in addition to the corresponding ordinary duties, taxes and other charges imposed by law on such product, commodity or article. The posting of a cash bond shall be required not earlier than sixty (60) days from the date of initiation of the investigation. The cash bond shall be deposited with a government depository bank and shall be held in trust for the respondent importer. The application of the cash bond shall not exceed four (4) months.

"The Secretary shall immediately transmit his preliminary findings together with the records of the case to the Commission for its formal investigation.

"(F) *Termination of Investigation by the Secretary or the Commission.* - The Secretary or the Commission, as the case may be, shall *motu proprio* terminate the investigation at any stage of the proceedings if the amount of subsidy is *de minimis* as defined in existing international trade agreements of which the Republic of the Philippines is a party; or where the volume of the

subsidized imported product, commodity or article, actual or potential, or the injury is negligible.

"(G) *Formal Investigation by the Commission.* - Immediately upon its receipt of the records of the case from the Secretary, the Commission shall commence the formal investigation and shall accordingly notify in writing all interested parties and, in addition, give public notice of such investigation in two (2) newspapers of general circulation.

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

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

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

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

"The Commission is hereby authorized to require any interested party to allow its access to, or otherwise provide, necessary information to enable the Commission to expedite the investigation. In case any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period of time or significantly impedes the investigation, a final determination shall be made on the basis of the facts available.

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

"(H) *Determination of the Existence of Subsidy.* - A subsidy is deemed to exist:

"(1) When the government or any public body in the country of origin or export of the imported product, commodity or article extends financial contribution to the producer, manufacturer or exporter of such product, commodity or article in the form of:

"(a) Direct transfer of funds such as grants, loans or equity infusion; or

"(b) Potential direct transfer of funds or assumption of liabilities such as loan guarantees; or

"(c) Foregone or uncollected government revenue that is otherwise due from the producer, manufacturer or exporter of the product, commodity or article: *Provided*, That the exemption of any exported product, commodity or article from duty or tax imposed on like product, commodity or article when destined for consumption in the country of origin, and/or export or the refunding of such duty or tax, shall not be deemed to constitute a grant of a subsidy:

Provided, further, That should a product, commodity or article be allowed drawback by the country of origin or export, only the ascertained or estimated amount by which the total amount of duties and/or internal revenue taxes was discounted or reduced, if any, shall constitute a subsidy; or

"(d) Provision of goods or services other than general infrastructure; or

"(e) Purchases of goods from the producer, manufacturer or exporter; or

"(f) Payments to a funding mechanism; or

"(g) Other financial contributions to a private body to carry out one or more of the activities mentioned in subparagraphs (a) to (f) above; or

"(h) Direct or indirect income or price support; and "(2) When there is a benefit conferred.

"(I) *Determination of Specific Subsidy.* - In the determination of whether or not a subsidy is specific, the following principles shall apply:

"(1) Where the government or any public body in the country of origin or export of the imported product, commodity or article explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

"(2) Where such government or public body through a law or regulation establishes objective criteria and conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist: *Provided*, That the eligibility is automatic and that such criteria or conditions are strictly adhered to. Objective criteria shall mean those which are neutral, do not favor certain enterprises over others, and are economic in nature and horizontal in application, such as number of employees or size of enterprise;

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

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

"(J) *Determination of Injury.* - The presence and extent of material injury or threat thereof to a domestic industry, or the material retardation of the growth, or the prevention of the establishment of a nascent enterprise because of the subsidized imports, shall be determined by the Secretary or the Commission, as the case may be, 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 either absolute or relative to production or consumption in