

[REPUBLIC ACT NO. 7843, December 21, 1994]

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."

SEC. 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 procedural remedies available to Filipino 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. 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, labor, 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 percent (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 percent (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 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 percent (5%) decline in sales volume or decline in sales prices of at least two percent (2%) as compared to the average monthly sales for the immediately preceding three (3) months; or

"(b) Five percent (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 percent (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 percent (3%) of the average monthly imports of the like articles in the Philippines unless countries which individually account for less than three percent (3%) of the average monthly imports of the like articles in the Philippines collectively account for more than seven percent (7%) of total average monthly imports of that article.

"D. The Special Committee shall, within fifteen (15) days after receipt of