

# **WORLD TRADE ORGANIZATION**

**G/ADP/N/1/PHL/2**  
21 September 2001

(01-4513)

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**Committee on Anti-Dumping Practices**

Original: English

## **NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 18.5 OF THE AGREEMENT**

### **PHILIPPINES**

The following communication, dated 12 September 2001, has been received from the Permanent Mission of the Philippines.

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Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, I have the honour to notify the Philippine legislation known as Republic Act No. 8752, entitled "The Anti-dumping Act of 1999" and its Implementing Rules and Regulations embodied in Joint Administrative Order No. 01 (2000).

## **REPUBLIC ACT NO. 8752**

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."

Section 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.

Section 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 Philippine 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 per cent (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 per cent (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 Philippine 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 anti-dumping 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 on the Commission as the case may shall be motu proprio terminate the investigation at any stage of the proceedings if the provisionally estimated margin of dumping is less than two per cent (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 per cent (3%) of the imports of the like article in the Philippines unless countries which individually account for less than three per cent (3%) of the imports of the like article in the Philippines collectively account for more than seven per cent (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 Commission to expedite the investigation.

"The formal investigation shall be conducted in a summary manner. No dilatory tactics or unnecessary or unjustified delays shall be allowed and the technical rules of evidence used in regular court proceedings shall not be applied.

"In case any or all of the parties on record fail to submit their answers to questionnaires/position papers within the prescribed period, the Commission shall base its findings on the best available information.

"The Commission shall complete the formal investigation and submit a report of its findings, whether favorable or not, to the Secretary within one hundred twenty (120) days from receipt of the records of the case: Provided, however, That the Commission shall, before a final determination is made, inform all the interested parties in writing of the essential facts under consideration which form the basis for the decision to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

"(i) Determination of Material Injury or Threat Thereof. - The presence and extent of material injury to the domestic industry, as a result of the dumped imports shall be determined on the basis of positive evidence and shall require an objective examination of, but shall not be limited to the following:

"(1) The rate of increase and amount of imports, either in absolute terms or relative to production or consumption in the domestic market;

"(2) The effect of the dumped imports on the price in the domestic market for like product, commodity or article, that is, whether there has been a significant price undercutting by the dumped imports as compared with the price of 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 prevent price increases, which otherwise would have occurred, to a significant degree; and

"(3) The effect of the dumped imports on the domestic producers or the resulting retardation of the establishment of a domestic industry manufacturing like product, commodity or article, including an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry concerned, such as, but not limited to, actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments.

"The extent of injury of the dumped imports to the domestic industry shall be determined by the Secretary and the Commission upon examination of all relevant evidence. Any known factors other than the dumped imports which at the same time are injuring the domestic industry shall also be examined and the injuries caused by these factors must not be attributed to the dumped imports. The relevant evidence may include, but shall not be limited to, the following:

"(1) The volume and value of imports not sold at dumping prices;

"(2) Contraction in demand or changes in consumption pattern;

"(3) Trade restrictive practices and competition between foreign and domestic producers;

"(4) Developments in technology; and

"(5) Export performance and productivity of the domestic industry.

"A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which will create a situation in which the dumping will cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the following shall be considered, inter alia, collectively:

"(1) A significant rate of increase of the dumped imports in the domestic market indicating the likelihood of substantially increased importation;

"(2) Sufficient freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the domestic market, taking into account the availability of other export markets to absorb any additional exports;

"(3) Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices and will likely increase demand for further imports; and

"(4) Inventories of the product being investigated.

"(j) Voluntary Price Undertaking. - Anti-Dumping investigation may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of the Commission of a satisfactory voluntary price undertaking executed by the exporter or foreign producer under oath and accepted by the affected industry that he will increase his price or will cease exporting to the Philippines at a dumped price, thereby eliminated the material injury to the domestic industry producing like product. Price increases under such undertaking shall not be higher than necessary to eliminate the margin of dumping.

"A price undertaking shall be accepted only after a preliminary affirmative determination of dumping and injury caused by such dumping has been made. No price undertaking shall take effect unless it is approved by the Secretary after a recommendation by the Commission.

"Even if the price undertaking is acceptable, the investigation shall nevertheless be continued and completed by the Commission if the exporter or foreign producer so desires or upon advice of the Secretary. The undertaking shall automatically lapse in case of a negative finding. In case of any affirmative finding, the undertaking shall continue, consistent with the provisions of Article VI of the GATT 1994.

"(k) Cumulation of Imports. - When imports of products, commodities or articles from more than one country are simultaneously the subject of an anti-dumping investigation, the Secretary or the Commission may cumulatively assess the effects of such imports only if the Secretary and the Commission are convinced that:

"(1) The margin of dumping established in relation to the imports from each country is more than de minimis as defined in Subsection G;

"(2) The volume of such imports from each country is not negligible, also as defined in Subsection G; and

"(3) A cumulative assessment of the effects of such imports is warranted in the light of the conditions of competition between the imported products, commodities or articles, and the conditions of competition between the imported product and the like domestic products, commodities or articles.

"(l) Imposition of the Anti-Dumping Duty. - The Secretary shall, within ten (10) days from receipt of the affirmative final determination by the Commission, issue a Department Order imposing an anti-dumping duty on the imported product, commodity, or article, unless he has earlier accepted a price undertaking from the exporter or foreign producer. He shall furnish the Secretary of Finance with the copy of the order and request the latter to direct the Commissioner of customs to collect within three (3) days from receipt thereof the definitive anti-dumping duty.

"In case a cash bond has been filed, the same shall be applied to the anti-dumping duty assessed. If the cash bond is in excess of the anti-dumping duty assessed, the remainder shall be returned to the importer immediately including interest earned, if any: Provided, That no interest shall be payable by the government on the amount to be returned. If the assessed anti-dumping duty is higher than the cash bond filed, the difference shall not be collected.

"Upon determination of the anti-dumping duty, the Commissioner of Customs shall submit to the Secretary, through the Secretary of Finance, certified reports on the disposition of the cash bond and the amounts of the anti-dumping duties collected.

"In case of a negative finding by the Commission, the Secretary shall issue, after the lapse of the period for the petitioner to appeal to the Court of Tax Appeals, through the Secretary of Finance, an order for the Commissioner of Customs for the immediate release of the cash bond to the importer. In addition, all the parties concerned shall also be properly notified of the dismissal of the case.

"(m) Period Subject to Anti-Dumping Duty. - An anti-dumping duty may be levied retroactively from the date the cash bond has been imposed and onwards, where a final determination of injury is made, or in the absence of provisional measures, a threat of injury has led to actual injury. Where a determination of threat of injury or material retardation is made, anti-dumping duties may be imposed only from the date of determination thereof and any cash bond posted shall be released in an expeditious manner. However, an anti-dumping duty may be levied on products which were imported into the country not more than ninety (90) days prior to the date of application of the cash bond, when the authorities determine for the dumped product in question that:

"(1) There is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

"(2) The injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied: Provided, That the importers concerned have been given an opportunity to comment.

"No duties shall be levied retroactively pursuant to herein subsection on products entered for consumption prior to the date of initiation of the investigation.

"(n) Computation of Anti-Dumping Duty. - If the normal value of an article cannot be determined, the provisions for choosing alternative normal value under Article VI of GATT 1994 shall apply.

"If possible, an individual margin of dumping shall be determined for each known exporter or producer of the article under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such determination impracticable, the Secretary and the Commission may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to them at the time of the selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

"However, if a non-selected exporter or producer submits information, the investigation must extend to that exporter or producer unless this will prevent the timely completion of the investigation.

"New exporters or producers who have not exported to the Philippines during the period of investigation will be subject to an accelerated review. No anti-dumping duties shall be imposed during the review. Cash bonds may be requested to ensure that in case of affirmative findings, anti-dumping duties can be levied retroactively to the date of initiation of the review.

"(o) Duration and Review of the Anti-Dumping Duty.- As a general rule, the imposition of an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing or threatening to cause material injury to the domestic industry or material retardation of the establishment of such industry.



"However, the need for the continued imposition of the anti-dumping duty may be reviewed by the Commission when warranted *motu proprio*, or upon the direction of the Secretary, taking into consideration the need to protect the existing domestic industry against dumping.

"Any interested party with substantial positive information may also petition the Secretary for a review of the continued imposition of the anti-dumping duty: Provided, That a reasonable period of time has elapsed since the imposition of the anti-dumping duty. Interested parties shall have the right to request the Secretary to examine: 1) whether the continued imposition of the anti-dumping duty is necessary to offset dumping; and 2) whether the injury would likely continue or recur if the anti-dumping duty were removed or modified, or both.

"If the Commission determines that the anti-dumping duty is no longer necessary or warranted, the Secretary shall, upon its recommendation, issue a department order immediately terminating the imposition of the anti-dumping duty. All parties concerned shall be notified accordingly of such termination, including the Secretary of Finance and the Commissioner of Customs.

"The duration of the definitive anti-dumping duty shall not exceed five (5) years from the date of its imposition (or from the date of the most recent review if that review has covered both dumping and injury) unless the Commission has determined in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable time period prior to the termination date that the termination of the anti-dumping duty will likely lead to the continuation or recurrence of dumping and injury.

"The provisions of this Section regarding evidence and procedures shall apply to any review carried out under this Subsection and any such review should be carried out expeditiously and should be conducted not later than one hundred fifty (150) days from the date of initiation of such review.

"(p) Judicial Review.- Any interested party in an anti-dumping investigation who is adversely affected by a final ruling in connection with the imposition of an anti-dumping duty may file with the Court of Tax Appeals, a petition for the review of such ruling within thirty (30) days from his receipt of notice of the final ruling: Provided, however, That the filing of such petition for review shall not in any way stop, suspend, or otherwise hold the imposition or collection, as the case may be, of the anti-dumping duty on the imported product, commodity or article. The rules of procedure of the court on the petition for review filed with the Court of Tax Appeals shall be applied.

"(q) Public Notices. - The Secretary or the Commission shall inform in writing all interested parties on record and, in addition, give public notices by publishing in two (2) newspapers of general circulation when:

- "(1) Initiating an investigation;
- "(2) Concluding or suspending investigation;
- "(3) Making any preliminary or final determination whether affirmative or negative;
- "(4) Making a decision to accept or to terminate an undertaking; and
- "(5) Terminating a definitive anti-dumping duty.

"(r) Report to be Submitted by the Bureau of Customs.- The Secretary shall regularly submit to the Commissioner of Customs a list of imported products susceptible to unfair trade practices. The Commissioner of Customs is hereby mandated to submit to the Secretary monthly reports covering importations of said products, including but not limited to the following:

- "(1) Commercial invoice;
- "(2) Bill of lading;
- "(3) Import entries; and
- "(4) Pre-shipment reports.

"Failure to comply with the submission of such report as provided herein shall hold the concerned officials liable and shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year.

"(s) Definition of Terms. - For purposes of this Act, the following definitions shall apply:

"(1) Anti-dumping duty refers to a special duty imposed on the importation of a product, commodity or article of commerce into the Philippines at less than its normal value when destined for domestic consumption in the exporting country, which is the difference between the export price and the normal value of such product, commodity or article.

"(2) Export price refers to (1) the ex-factory price at the point of sale for export; or (2) the F.O.B. price at the point of shipment. In cases where (1) or (2) cannot be used, then the export price may be constructed based on such reasonable basis as the Secretary or the Commission may determine.

"(3) Normal value refers to a comparable price at the date of sale of the like product, commodity or article in the ordinary course of trade when destined for consumption in the country of export.

"(4) Domestic industry refers to the domestic producers as a whole of the like product or to those of them whose collective output of the product constitutes a major proportion of the total domestic production of that product, except when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'domestic industry' may be interpreted as referring to the rest of the producers.

"(5) Dumped import/ product refers to any product, commodity or article of commerce introduced 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, which 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.

"(6) Like product refers to a product which is identical or alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

"(7) Non-selected exporter or producer refers to an exporter or producer who has not been initially chosen as among the selected exporters or producers of the product under investigation.

"(t) Administrative Support.- Upon the effectivity of this Act, the Departments of Trade and Industry, Agriculture and the Tariff Commission, shall ensure the efficient and effective implementation of this Act by creating a special unit within their agencies that will undertake the functions relative to the disposition of anti-dumping cases. All anti-dumping duties collected shall be earmarked for the strengthening of the capabilities of these agencies to undertake their responsibilities under this Act."

SEC. 4. Penalty Clause. - Failure of the government officials herein mentioned to prosecute, investigate and initiate necessary action against the exporter as provided in this Act and of the rules

and regulations issued pursuant hereto shall be a ground for dismissal from office, in addition to the sanctions provided in the Revised Penal Code and the Anti-Graft and Corrupt Practices Act.

Failure of the concerned officials of the Bureau of Customs to collect the cash bond or definitive dumping duty pursuant to the department order of the Secretary shall constitute prima facie evidence and dereliction of duty which shall be punishable by removal from the office.

The importer's license or charter to do business shall be revoked for those found guilty of dumping. Further, its officers shall be disqualified from holding official positions in corporations of other business entities in the Philippines. A fine equal to twice the definitive anti-dumping duty shall be imposed.

SEC. 5. Annual Report. - The use of funds under this Act shall be subject to regular audit by the Commission on Audit which shall render an annual report of its findings to Congress. Likewise, the Secretary shall submit an annual report of its operation under this Act to Congress.

SEC. 6. Oversight. - There shall be a Congressional Oversight Committee composed of the Chairmen of the Committee on Trade and Industry of both the Senate and the House of Representatives, and Members from the Committee on Ways and Means as designated in both chambers.

SEC. 7. Rules and Regulations. - An inter-agency committee to be composed of the Secretaries of the Departments of Trade and Industry, Agriculture, and Finance, the Commissioner of the Bureau of Customs and the Chairman of the Tariff Commission shall promulgate all rules and regulations necessary to carry out their respective functions under this Act.

SEC. 8. Repealing Clause. - Section 301, Part 2, Title II, Book I of the Tariff and Customs Code, as amended by Republic Act No. 7843 and all other laws, decrees, rules and regulations, ordinances, executive or administrative orders, and such other presidential issuances related to dumping which are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

SEC. 9. Separability Clause. - If any of the provisions of this Act is declared invalid by a competent court, the remainder of this Act or any provisions not affected by such declaration of invalidity shall remain in full force and effect.

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

ADMINISTRATIVE ORDER NO. 01  
**Implementing Rules and Regulations  
Governing the Imposition of an  
Anti-Dumping Duty under**

**REPUBLIC ACT 8752**

**THE ANTI-DUMPING ACT OF 1999**

In view of the amendments to Section 301 of the Tariff and Customs Code of the Philippines brought about by the passage of RA 8752, otherwise known as the ANTI-DUMPING ACT OF 1999, and by authority of Subsection 7 thereof, the following rules and regulations are hereby prescribed for the compliance of all concerned:

**Section 1. Scope** - The provisions of this Implementing Rules and Regulations (IRR) shall apply to any product which is imported into the Philippines at an export price less than its normal value in the ordinary course of trade for the like product when destined for consumption in the country of export or origin and which 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 in the Philippines.

The shipment and/or consignment of the following products shall not be subject to an anti-dumping protest:

- (a) Products imported by or consigned to government agencies not organized for profit and particularly designated by law or proper authorities to import, directly or through awardees, such products as would stabilize or supplement shortages; and
- (b) Conditionally duty-free importations allowable under Section 105 of the Tariff and Customs Code of the Philippines, as amended.

**Section 2. Definition of Terms** - For purposes of this IRR, the following definition of terms shall prevail:

- (a) "AGRICULTURAL PRODUCT " refers to a product classified under Chapters 1 to 24 of the Tariff and Customs Code of the Philippines, including those under the specific tariff lines listed in Annex A.
- (b) "ANTI-DUMPING DUTY" refers to a special duty imposed on the importation of a product into the Philippines at less than its normal value when destined for domestic consumption in the country of export or origin, it being the difference between the export price and the normal value of such product.
- (c) "ARMS LENGTH TRANSACTION" refers to a transaction where the price is not affected by any relationship between the buyer and the seller, or if there is no compensation, reimbursement, benefit or other consideration given in respect of the price.
- (d) "CAUSAL LINK" refers to a finding that the material injury suffered by the domestic industry is the direct result of the importation of the dumped product.
- (e) "COMMISSION" refers to the Tariff Commission.

- (f) "COMPARABLE PRICE" refers to the domestic price of the like product in the country of export or origin at the same level of trade, normally at the ex-factory level, and in respect of sales made at the same time as, or as near as possible to, the date of exportation to the Philippines.
- (g) "COUNTRY OF EXPORT" is the country where the allegedly dumped product was shipped to the Philippines, regardless of the location of the seller. The country of export and the country of origin may be the same, but not in all instances.
- (h) "COUNTRY OF ORIGIN" is the country where the allegedly dumped product either was wholly obtained or where the last substantial transformation took place. The country of origin and the country of export may be the same, but not in all instances. In the case of transshipment where a product is shipped from a third country that is not the country where the product was manufactured or processed, the country of origin will be different from the country of export.
- (i) "DOMESTIC INDUSTRY" refers to the domestic producers as a whole of the like product or to those of such producers whose collective output of the product constitutes a major proportion of the total domestic production of that product, except that when producers are related to the importers or foreign exporters or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers.

Producers shall be deemed to be related to importers or foreign exporters only if:

1. one of them directly or indirectly controls the other; or
2. both of them are directly or indirectly controlled by a third person; or
3. together they directly or indirectly control a third person, provided that there are grounds to believe or suspect that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

For this purpose, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

If available data does not permit the separate identification of the domestic production of the like product, the domestic production shall refer to the production of the narrowest group or range of products which includes the like product for which the necessary information is available.

- (j) "DUMPED IMPORT/ PRODUCT" refers to any product which is imported into the Philippines at an export price less than its normal value in the ordinary course of trade for the like product destined for consumption in the country of export or origin, and which 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.
- (k) "FOREIGN EXPORTER" refers to one whose name appears on documentation attesting to the export of the product to the Philippines regardless of the manufacturer's name in the invoice.
- (l) "EXPORT PRICE" refers to (1) the ex-factory price at the point of sale for export; or (2) the freight-on-board (F.O.B.) price at the point of shipment, of the allegedly dumped product. In cases where (1) or (2) cannot be used, then the export price may be constructed based on such reasonable bases as the Secretary or the Commission may determine.

- (m) "INTERESTED PARTIES" refer to persons or entities which are directly affected by the investigation. They shall include (1) a domestic importer, a foreign exporter or producer of the product subject to investigation, or a trade or business association a majority of the members of which are importers, foreign exporters or producers of such product; (2) the government of the country of export or origin; and (3) a producer of the like product in the Philippines or a trade and business association a majority of the members of which produce the like product in the Philippines.
- (n) "LIKE PRODUCT" refers to a product which is identical or alike in all respects to the allegedly dumped product, or in the absence of the former, another product which, although not alike in all respects, has characteristics closely resembling those of the allegedly dumped product.
- (o) "NEW FOREIGN EXPORTER" refers to a foreign exporter who did not export the allegedly dumped product during the investigation period.
- (p) "NON-AGRICULTURAL PRODUCT" refers to a product classified under Chapters 25 to 97 of the Tariff and Customs Code of the Philippines, excluding the products defined in Annex A.
- (q) "NON-SELECTED FOREIGN EXPORTER OR PRODUCER" refers to a foreign exporter or producer who has not been initially selected for the purpose of computing the individual margins of dumping.
- (r) "NON-MARKET ECONOMY" refers to the country of export or origin where the government (1) has a monopoly or substantial monopoly of trade of the country and; (2) determines or substantially influences the domestic price of the products in that country.
- (s) "NORMAL VALUE" refers to a comparable price at the date of sale of the like product in the ordinary course of trade when destined for consumption in the country of export or origin.
- (t) "PRICE DEPRESSION" refers to the extent at which the domestic producer reduces its selling price in order to compete with the allegedly dumped product.
- (u) "PRICE SUPPRESSION" refers to the extent by which the allegedly dumped product prevents the domestic producer from increasing its selling price to a level that will allow full recovery of its cost of production.
- (v) "PRICE UNDERCUTTING" refers to the extent at which the allegedly dumped product is consistently sold at a price below the domestic selling price of the like product.
- (w) "SECRETARY" refers to the Secretary of Trade and Industry in the case of non-agricultural product or the Secretary of Agriculture, in the case of agricultural product, or their duly designated representatives.
- (x) "TRANSSHIPMENT" refers to a case where the allegedly dumped product is not imported directly from the country of origin but is physically shipped through a third country without, however, entering into the commerce thereof.

### **Section 3. Initiation of Action**

(a) Information and other forms of assistance to the domestic industry:

The Secretary and the Commission shall, upon request, make available to the public general information concerning the anti-dumping measure and other forms of trade remedies. Such information may include the procedures to be followed and the appropriate dates or milestones in investigations related to the imposition of such measures.

The Secretary and the Commission shall also provide, to the extent possible at all stages of the action, assistance and advice to interested parties which seek to obtain the remedies and benefits of the anti-dumping measure, such assistance and advice to include the following:

1. Information on import volumes and values, at the specific product level;
2. Information on prices and costs of production in other countries, and other relevant information; and
3. Informal legal and technical advice on the appropriateness of invoking the anti-dumping measure as a remedy for the trade problem, and on the availability of information in support of the proposal.

Philippine trade, agriculture or finance attaches and other consular officials or attaches in the countries of export or production are also mandated to furnish the applicant pertinent information or documents related to the allegedly dumped product within a period not exceeding thirty (30) days from receipt of a request.

The Department and the Commission shall coordinate with their representatives in other countries and/or tap other information sources in building a database of these information.

Receipt of these forms of assistance shall not be construed as a guarantee that the recipient will prevail in the anti-dumping investigation.

(b) Petitioners

1. Any person whether natural or juridical, representing a domestic industry may file a written application using the pro-forma protestant's questionnaire, duly supported by relevant documents which shall include evidence of a) dumping, b) injury, and c) causal link between the importation of the allegedly dumped products and the alleged injury. The applicant shall submit four (4) copies of the application, including annexes, two (2) copies of which shall contain the non-confidential summaries of the information submitted. Simple assertions, unsubstantiated by relevant evidences, cannot be considered sufficient to meet the requirements of this paragraph.

2. A properly documented application shall contain relevant evidences and information reasonably available to the applicant on the following:

- (i) identity of the applicant and a description of the volume and the value of his domestic production of the like product;
- (ii) a list of all known domestic producers of the like product and, if possible, a description of the volume and value of domestic production of the like product accounted for by such producers, if the application is made on behalf of the domestic industry;
- (iii) complete description of the allegedly dumped product;
- (iv) name of the country of export or origin of the allegedly dumped product;

- (v) identity of each known foreign exporter or producer of the allegedly dumped product, or their duly authorized representative organizations;
- (vi) list of known persons importing the allegedly dumped product with their last known address;
- (vii) information on the normal value of the allegedly dumped product in the country of export or origin or, if appropriate, information on the prices at which the product is sold from the country of export or origin to a third country or, on the constructed value of such product;
- (viii) information on export prices or, if appropriate, on prices at which the product is first resold to an independent buyer in the Philippines;
- (ix) information on the evolution of the import volume of the allegedly dumped products;
- (x) effect of the price of the allegedly dumped products on the price of the like product in the domestic market; and
- (xi) consequent impact of the importation of the allegedly dumped products on the domestic industry demonstrated by relevant factors and indices having a bearing on the state of the domestic industry as enumerated in Section 12 of this IRR.

3. The application shall include a certification signed by the applicant that the information presented therein are accurate and complete to the best of his knowledge.

(c) Filing of a Petition

1. The duly accomplished application, using the pro-forma protestant's questionnaire, shall be filed with the Secretary of Trade and Industry in the case of a non-agricultural product, or with the Secretary of Agriculture in the case of an agricultural product.

2. Upon the acceptance of a properly documented application, the Secretary shall require the applicant to post a surety bond to answer for any and all damages that the importer may sustain by reason of the filing of a frivolous petition. Failure to post the surety bond within ten (10) days shall result in the dismissal of the application.

The surety bond shall be equal to ten per cent (10%) of the value of the importation of the allegedly dumped product during the applicable period of investigation as provided in Section 11.a: Provided, That the surety bond shall not exceed two hundred fifty thousand pesos (PhP 250,000.00) in the case of an agricultural product, or five hundred thousand pesos (PhP 500,000.00) in the case of a non-agricultural product. The Secretary shall order the immediate release of the surety bond upon determining that the petition is not frivolous.

3. The application is not frivolous if the reason for its dismissal is a de minimis margin of dumping or negligible volume or injury as defined in Section 9 of this IRR. It is also not frivolous if, based on evidences available to the Secretary, the causal link cannot be established which prevents the issuance of an Order to impose a provisional measure.

In determining whether an application is frivolous or not, either of the following factors may be taken into account:

- (i) Whether there is any intentional misrepresentation of the information or evidence supplied in the application; or
- (ii) Whether there is any other evidence of bad faith on the part of the applicant.

4. The Secretary shall preliminarily screen the application if the following conditions are met:

- (i) The application is signed;



- (ii) All relevant questions are answered or the reasons for the absence of information are given
- (iii) The attachments to the application are complete; and
- (iv) The application is supported by a sufficient part of the Philippine industry producing the like product.

Failure to supply all the information sought in the application will lead to the non-acceptance thereof. The Secretary shall check the consistency of the information provided in the application against other information available to him. The Secretary shall clarify any unclear or ambiguous statement with the applicant.

As soon as the requirements are completed, the Secretary shall acknowledge in writing that he has already accepted a properly documented application. The date of the Secretary's letter shall be considered as day zero (0) of the five (5) days within which he is required to determine whether there is sufficient evidence to justify the initiation of an investigation. The Secretary shall issue the letter as soon as practicable from his receipt of a properly documented application. If the applicant decides to give the Secretary further information in support of an application, the five (5) day period herein mentioned shall recommence, from the date of the submission of the new information. After this period, the Secretary shall no longer entertain any information that may be provided by the applicant.

(d) Requirements for Initiation

1. The Secretary shall, within five (5) working days from the date of his letter accepting the properly documented application referred to in Section 3.c.4, examine the accuracy and adequacy of the petition to determine whether there is sufficient evidence to justify the initiation of an investigation. The evidence of both dumping and injury shall be considered simultaneously a) in the decision whether or not to initiate an investigation, and b) thereafter, during the course of the investigation, starting at the earliest date when provisional measures may be applied.

In assessing the sufficiency of evidence provided in the application, the Secretary will only satisfy himself that there is evidence that indicates dumping or the likelihood of dumping, and material injury based on the evidences submitted by the applicant.

If there is no sufficient evidence to justify the initiation of an investigation, the Secretary shall dismiss the petition and notify the Secretary of Finance, the Commissioner of Customs and other parties concerned regarding such dismissal.

2. An investigation shall not be initiated unless it has been determined that the application has been made "by or on behalf of the domestic industry". 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 per cent (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.

3. No investigation shall be initiated when domestic producers expressly supporting the application account for less than twenty five per cent (25%) of total production of the like product produced by the domestic industry.

4. In exceptional circumstances, the Philippines may be divided into two (2) 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.

5. 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 causal link to justify the initiation of an investigation.

These special circumstances may involve, among others

- (i) The absence of a national organization of producers, if there are many small-scale producers of the like product which cannot be regarded as a separate industry under the criteria set forth in Section 3.d.4 of this IRR;
- (ii) The inability of a national or local organization of producers to file an application due to limited resources; or
- (iii) The presence of a national or local emergency which prevents the affected domestic industry from filing a petition.

6. All persons in or against whom any right to relief in respect to the alleged dumping is claimed to exist may, upon the discretion of the Secretary or the Commission, join as petitioners or be joined as respondents in one (1) petition, where any question of law or fact common to all such respondents may arise in such anti-dumping action.

#### **Section 4. Notice to the Secretary of Finance**

- (a) Within three (3) days from the receipt of the application, the Secretary shall notify the Secretary of Finance and furnish him with a complete copy or summary of the application, or of the information supporting an anti-dumping action in case the Secretary initiates the investigation on his own motion.
- (b) The Secretary of Finance shall inform the Commissioner of Customs, within three (3) days from receipt of the notice by the Secretary as defined in the preceding paragraph, of the filing and pendency of the application or information for anti-dumping action and instruct him to gather and furnish the Secretary, within five (5) days from receipt of the instructions of the Secretary of Finance certified true copies of all import entries and relevant documents covering such allegedly dumped product imported into the Philippines during the last twelve (12) months preceding the date of application. The Commissioner of Customs shall likewise make such similar additional reports on the number, volume, and value of the importation of the allegedly dumped product to the Secretary every ten (10) days thereafter. Under no circumstances shall an anti-dumping investigation hinder the implementation of the procedures for custom clearance.

#### **Section 5. Notice to the Country of Export or Origin**

Upon his acceptance of a properly documented application and before proceeding to initiate an investigation, the Secretary shall notify the government of the country of export or origin about the impending anti-dumping investigation and provide it a copy of the non-confidential summary of the application. However, the Secretary shall refrain from publicizing the application for the initiation of the investigation before a decision has been made to do so.

## **Section 6. Notice to Concerned Parties and Submission of Evidences**

- (a) Within four (4) days after he makes the decision to initiate a preliminary investigation, the Secretary shall cause the publication of the notice of initiation of preliminary investigation in two (2) newspapers of general circulation. The date of publication shall be considered as day one (1) of the initiation of the investigation.

The public notice of the initiation of an investigation shall contain, unless otherwise made available through a separate report, adequate information on the following matters:

- (i) The nature of the allegedly dumped product;
  - (ii) The country concerned;
  - (iii) A summary of the particulars of the injury and basis of the alleged dumping in the application;
  - (iv) The time period for the submission of evidences or views to the Secretary;
  - (v) The date of the initiation of the investigation; and
  - (vi) The address to which representations by interested parties shall be directed.
- (b) Within two (2) days from the initiation of the investigation and after having notified the country of export or origin, the Secretary shall:
- (i) Identify all known interested parties i.e. importer, foreign exporter and/or producer, and notify them of the initiation of the investigation;
  - (ii) Furnish them with a copy of the initiation report, petitioner's application, and its annexes, subject to the requirement to protect confidential information; and
  - (iii) Provide them with a pro-forma respondent's questionnaire.

The respondent is required to submit within thirty (30) days from the receipt of such notice the completed pro-forma respondent's questionnaire and other evidence and information to dispute the allegations contained in the application.

In cases where the number of known interested parties is so large that it is impractical to provide a non-confidential copy of the documents to each of them, a copy will be given to the government of the country of export or origin and to the representative organizations. These documents shall also be made available to other interested parties involved upon request.

The notice shall be deemed to have been received five (5) days from the date on which it was sent by registered mail or transmitted by fax to the respondent or the appropriate diplomatic or official representative of the country of export or origin.

Philippine trade or agriculture attaches and other consular officials in the concerned country of export or origin may also be provided a copy of the notice of initiation, the non-confidential application, and the pro-forma respondent's questionnaire.

- (d) The Secretary and the Commission shall provide opportunities for industrial users of the allegedly dumped product, and for representative consumer organizations in cases where such product is commonly sold at the retail level, to provide information which is relevant to the investigation.
- (e) The pro-forma respondent's questionnaire shall be used by both the Secretary and the Commission in their respective enquiries. Whenever any interested party fails to respond adequately to such questionnaire, is unable to produce information requested, refuses access to or otherwise does not provide any other information within the period allowed for the

investigation, or otherwise significantly impedes the investigation, the preliminary or final determination of the conditions required in an anti-dumping investigation shall proceed on the basis of facts available. Even though the information provided by any interested party may not be complete in all respects, this shall not be disregarded provided the interested party is deemed to have acted to the best of his ability.

- (f) If any evidence or information is not accepted by the Secretary, the supplying party shall be informed forthwith of the reason/s therefor, and shall be given an opportunity to provide further explanations: Provided, That this will not impede the investigation considering the period required for the Secretary to make a preliminary determination. If the explanations are not satisfactory, the reasons for the rejection of such evidence or information shall be given in the report containing the preliminary determination.
- (g) Information which are confidential, either by nature or which are provided on a confidential basis, shall not be disclosed without the expressed permission of the supplying party. The interested parties providing confidential information shall be required to provide two (2) copies of non-confidential summaries thereof to be placed in a public file and made available to all interested parties upon the initiation of the investigation. These summaries shall contain sufficient details to permit a reasonable understanding of the confidential information to enable other parties to respond to claims based on such information. In exceptional circumstances, wherein summarization of confidential information is not possible, the supplying party must state the reason why it cannot be provided. Where any request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in summary form, such information may be disregarded, unless it can be shown from appropriate sources that the information is correct.

The following information may be considered confidential if so designated by the supplying party:

1. Business or trade secrets concerning the nature of the product or the production process;
  2. Production costs but not the identities of the production components, unless these are trade secrets;
  3. Distribution costs but not the channels of distribution;
  4. Terms of sale but not those offered to the public;
  5. Prices of individual sales, likely sales, or other offers but not components of prices, such as transportation, if based on published schedules, dates of sale, order numbers, or product descriptions (other than business or trade secrets described in (1);
  6. Names of particular customers, distributors, or suppliers but not destinations of sale or designation of type of customer, distributor or supplier, unless the destination or designation would reveal the name;
  7. Exact amount of the dumping margin on individual sales;
  8. Names of particular persons from whom confidential information was obtained; and
  9. Any other specific business information which, if released to the public, would cause substantial harm to the competitive position of the supplying party.
- (h) In order to verify information contained in the application or to obtain further details, the Secretary may conduct visits, or ocular inspections of the facilities, of the domestic producers and importers.

The Secretary may also visit other domestic producers and importers that have not provided submissions during the investigation.

- (i) A public file shall be maintained by the Secretary and the Commission for all investigations initiated. It shall contain a copy of all submissions from interested parties and all relevant correspondences concerning the investigation, subject to confidentiality considerations. The public file will be made available to any interested party upon request.

The following will normally be considered as public information:

- 1. Factual information of a type that has been published or otherwise made available to the public by the supplying party;
- 2. Factual information that is not designated as confidential by the supplying party;
- 3. Factual information that although designated as confidential by the supplying party:
  - (i) is in a form that cannot be associated with a particular party; or
  - (ii) has been determined by the authorities as not deserving confidential treatment;
- 4. Publicly available laws, regulations, decrees, orders and other official issuances of a country; and
- 5. Written arguments relating to the investigation that is not designated as confidential.

#### **Section 7. Preliminary Determination**

- (a) Not later than thirty (30) working days from receipt of the answer of the respondents and other interested parties, the Secretary shall, on the basis of the application, the answers of the respondents, and the respective supporting documents or information, make a preliminary determination of the need for the imposition of a provisional anti-dumping duty.
- (b) The Secretary shall essentially determine the following in the preliminary determination:
  - 1. Price difference between the export price and the normal value of the allegedly dumped product in the country of export or origin;
  - 2. Presence and extent of material injury or threat of material injury to the domestic industry producing the like product or the material retardation of the establishment of a domestic industry producing the like product; and
  - 3. Causal relationship between the allegedly dumped product and the material injury or threat of material injury to the affected domestic industry or the material retardation of the establishment of a domestic industry producing the like product.

The Secretary shall take into account the effects of the seasonality of products, whenever applicable, in the preliminary determination of whether or not the elements for the imposition of a provisional anti-dumping duty exist.

- (c) The preliminary findings of the Secretary, if affirmative, together with the records of the case, shall be transmitted to the Commission for its immediate formal investigation within three (3) days from adopting the decision. However, if the preliminary findings of the Secretary are negative, the case shall be dismissed.

## **Section 8. Appraisement and Delivery of Products Upon Filing of Provisional Anti-Dumping Duty**

- (a) If the preliminary finding of the Secretary is affirmative and to prevent further injury during the investigation, 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 anti-dumping duty but not greater than the provisionally estimated margin of dumping, in addition to any other duties, taxes and charges imposed by law, on the allegedly dumped product. The Secretary may order the imposition of a cash bond lower than the provisionally estimated margin of dumping if it is deemed sufficient to remove or prevent the material injury while the case is under formal investigation.

The Secretary may suspend the imposition of the provisional anti-dumping duty, taking into consideration the following factors, among others: (1) if the imposition of the provisional duty will result in a political or economic crisis; or (2) if such imposition will cause a severe shortage of the like product in the domestic market.

- (b) Within three (3) days from receipt of instructions from the Secretary of Finance to impose the cash bond, the Commissioner of Customs shall instruct the Collector of Customs to collect the regular duties, taxes and other charges, if any, on the shipment involved so that such regular duties could be paid together with the cash bond. The Commissioner of Customs may only authorize the release of the allegedly dumped product after the regular duties have been paid and the cash bond has been deposited.
- (c) The cash bond shall be deposited with a government depository bank and shall be held in trust for the respondent who posted the bond.
- (d) 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 the initiation of the investigation shall be the date the Secretary publishes such notice in two (2) newspapers of general circulation.
- (e) The provisional anti-dumping duty may be imposed for a period of four (4) months, which may be extended to six (6) months upon request of the foreign exporter 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.
- (f) The relevant provisions of Section 18 of this IRR shall be followed in the application of the provisional anti-dumping duty.

## **Section 9. Termination of Investigation**

- (a) 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 (2) per cent of the export price or the volume of the allegedly dumped products or injury is negligible, as defined in existing international trade agreements of which the Republic of the Philippines is a party.
- (b) The volume of the allegedly dumped products from a particular country shall normally be regarded as negligible if it accounts for less than three per cent (3%) of the total imports of said product in the Philippines unless countries which individually account for less than three

per cent (3%) of the total imports of the said product in the Philippines collectively account for more than seven per cent (7%) of the total imports of that product.

#### **Section 10. Formal Investigation by the Commission**

- (a) 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 its formal investigation through the publication of such particulars, and a concise summary of the application, in two (2) newspapers of general circulation.
- (b) The Commission shall conduct the formal investigation to determine the following:
  - 1. If the domestic product is identical or alike in all respects to the allegedly dumped product, or in the absence of the former, another product which, although not alike in all respects, has characteristics closely resembling those of the allegedly dumped product.
  - 2. If the allegedly dumped product 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;
  - 3. 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 producing the like product;
  - 4. The existence of a causal relationship between the allegedly dumped product and the material injury or threat of material injury to the affected domestic industry, or the material retardation of the establishment of a domestic industry producing the like product;
  - 5. The anti-dumping duty to be imposed; and
  - 6. The duration of the imposition of the anti-dumping duty.
- (c) The Commission shall require all interested parties to appear for a preliminary conference on the schedules and procedure of the investigation, the nature of the administrative and fact-finding proceedings, the non-applicability of the technical rules of procedures provided by the Rules of Court, the non-availability of confidential information, and other related matters relative to the speedy disposition of the case and shall require them to submit their respective initial memoranda or position papers within fifteen (15) working days from notice.
- (d) The formal investigation shall be conducted in a summary manner. No dilatory tactics or unnecessary or unjustified delays shall be allowed and the technical rules of evidence used in regular court proceedings shall not be applied.

The Commission shall take into account the effects of the seasonality of products, whenever applicable, in the final determination of whether or not the elements for the imposition of an anti-dumping duty exist.

- (e) The Commission shall, after due notification, conduct a public consultation to give all parties directly affected and such other interested parties that in the judgment of the Commission are entitled to attend, an opportunity to be heard and to present evidence bearing on the subject

matter. The purpose of this public consultation is to determine whether or not the allegedly dumped product is imported at a price less than its normal value and by reason thereof, the domestic industry producing the like product is being injured materially.

- (f) Where the information provided in the pro-forma questionnaires submitted by the protestant and respondent are insufficient, the Commission may require the submission of additional information from the applicant/s, domestic producers, importers, foreign exporters or producers, that may be useful in the overall evaluation of the case.
- (g) The Commission shall require any interested party to allow it access to, or otherwise provide, necessary information to enable the Commission to expedite the investigation. The Commission may conduct on-site investigations of the domestic producers, importers, foreign exporters or producers concerned, including ocular inspections of their facilities, to verify information provided or obtain further details. The Commission may also visit other domestic producers, importers, foreign exporters or producers who have not provided a submission to the investigation. Visits or inspections may be conducted by the Commission even without the presence of interested parties.

In the case of an on-site investigation involving a foreign exporter or producer, the Commission shall obtain the agreement of the firms concerned. As soon as the agreement of the parties has been confirmed, the Commission shall notify the government of the country of export or origin of the names and addresses of the parties to be visited and the dates agreed upon. Sufficient advance notice shall be given to the parties in question before the visit is made.

Prior to the visit, these firms shall be advised of the general nature of the information to be verified and of any further information which needs to be provided, although this shall not preclude requests to be made on the spot for further details to be provided in the light of information obtained. Enquiries or questions by the Commission or the parties shall, whenever possible, be answered before the visit is made. The Commission shall make the results of such on-site investigation available to such parties subject to the requirements of protecting confidential information.

The procedures described above shall also apply to on-site investigations carried out in the territory of countries other than the countries of export or origin.

- (h) In case any or all of the parties on record fail to submit their answers to position papers or to questionnaires within the prescribed period, the Commission shall base its findings on the best available information.
- (i) The relevant provisions of Section 6 of this IRR, especially those on the treatment of confidential information and acceptance of evidences, shall also be followed in the formal investigation.

## **Section 11. Determination of Dumping**

- (a) The Secretary and the Commission shall determine the existence of dumping by making a fair comparison between the export price and the normal value of the allegedly dumped product, covering all transactions for the allegedly dumped product during the period of investigation (POI). In general, the POI for the determination of the margin of dumping or price difference shall cover import transactions made at least six (6) months prior to the date of filing of the petition: Provided, however, that in some cases, the POI may be adjusted to cover a shorter period in order to take into account other considerations that will ensure the appropriateness



of the chosen POI, e.g., seasonality of products, availability of data, drastic increase in the importation of the dumped product, or facility in the verification of data.

- (b) The comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at the same time or as near as possible to the date of exportation. Due allowance shall be made in each case for differences which affect price comparability including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences which are also demonstrated to affect price comparability.

Where the normal value and export price as established are not comparable, adjustments can be made on the basis of the following factors:

1. Physical characteristics, for which the amount of adjustment shall correspond to a reasonable estimate of the market value of the difference;
  2. Import charges and indirect taxes, for which the adjustment shall be made to the normal value for an amount corresponding to any import charges or indirect taxes borne by the allegedly dumped product and by materials physically incorporated therein when intended for consumption in the country of export or origin and not collected or refunded in respect of the exported product;
  3. Discounts, rebates, and quantities which are directly linked to the sales under consideration;
  4. Level of trade, for which the adjustment shall be based on the market value of the difference which has directly affected price comparability as demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the country of export or origin;
  5. Transport, insurance, handling, local and ancillary costs directly incurred for conveying the allegedly dumped product from the premises of the foreign exporter to the independent buyer, where such costs are included in the prices charged;
  6. Packing costs directly related to the product concerned;
  7. Cost of credit directly granted for the sales under consideration;
  8. After sales cost such as warranties, guaranties, technical assistance, and services as provided for by law and/ or in the sales contract;
  9. Commissions paid in respect of the sales under consideration; and
  10. Currency conversions as provided in letter (i) of this section.
- (c) If the normal value of a product cannot be determined because of the following conditions in the domestic market of the country of export or origin:
1. absence of sales of the allegedly dumped product in the ordinary course of domestic trade; or
  2. particular market situation makes domestic sales unsuitable for proper comparison (price does not reflect a fair price in normal market conditions e.g. consignment or monopsony); or
  3. volume of domestic sales is less than 5% of export sales to the Philippines. A lower ratio of domestic sales to Philippine imports may be acceptable if it is of sufficient magnitude to provide for a proper comparison. The volume sold to the domestic and export markets will be assessed over a reasonable period e.g. one year in order to avoid distortions such as seasonal fluctuations.

then, the Secretary or Commission, may determine that the normal value shall be either:

- (i) the comparable price of the like product when exported to an appropriate third country provided that this price is representative; or
  - (ii) the constructed value or the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.
- (d) In determining whether a third country is appropriate for determining the normal value, the following criteria, among others, may be considered:
  - 1. volume of trade from the country of export to the selected third country is similar to the volume of trade from the country of export to the Philippines; and
  - 2. nature of trade of the like product between the country of export and the selected third country is similar to the nature of trade between the country of export and the Philippines.
- (e) Sales of the allegedly dumped product in the domestic market of the country of export or origin, or sales to a third country, at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being within the ordinary course of trade by reason of price and may be disregarded in determining normal value only if it is determined that such sales are made within one (1) year and in no case less than six (6) months in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable time period. If prices which are below per unit of costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable time period. Sales below per unit cost are made in substantial quantities when the weighted average selling price of the transaction under consideration for the determination of normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represent not less than 20 per cent (20%) of the volume sold in transactions under consideration.
 

Examples of sales which may be considered as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at irregular prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arms length transaction price.
- (f) If the normal value is based on the cost of production in the country of origin, costs shall be calculated based on records kept by the foreign exporter or producer provided that these are in accordance with the generally accepted accounting principles of the country of export or origin and reasonably reflect the costs associated with the production and sale of the allegedly dumped product. The amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the allegedly dumped product by the foreign exporter or producer. When such amounts cannot be determined on this basis, it shall be based on the actual amounts realized by the foreign exporter or producer or the weighted average of the actual amounts incurred and realized through other foreign exporters or producers or by any other reasonable method.
- (g) If the normal value is based on the best information available, including the information supplied in the application, such information shall be checked, where practicable and with due regard to the time limits of the investigation, by referring to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns or information obtained from other interested parties during the investigation.

- (h) In the case of products imported from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the export price from such a third country to other countries or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Philippines for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected taking due account of any reliable information available at the time of selection. The applicant may nominate a comparable market economy for consideration by the Secretary or the Commission. When selecting a third country, it should have a similar costing structure, and if possible, be at a similar stage of economic development to the country of export or origin, particularly in regard to the industry under investigation. In making a comparison, factors such as gross national product, infrastructure development, manufacturing process, technical standards and production scales may be taken into account.

- (i) When the comparison between normal value and export price requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale as stated in the contract, purchase order, order confirmation or invoice, whichever establishes the material terms of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and foreign exporters shall be allowed at least sixty (60) days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.
- (j) In the case where products are not imported directly from the country of origin but are exported from an intermediate country, the price at which the products are sold from the country of export to the Philippines shall 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 the products are merely transshipped 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.
- (k) In cases where there is no export price or where it appears that the export price is unreliable because of a relationship or a compensatory arrangement between the foreign exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the allegedly dumped product is first resold to an independent buyer, or if such product is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Secretary or Commission may determine. In this case, allowances for costs, including duties and taxes incurred between importation and resale, and for profits, should also be made. If in these cases, price comparability has been affected, the normal value shall be established at a level of trade equivalent to the level of trade of the constructed export price taking into consideration due allowances which affect price comparability. The necessary information to ensure a fair comparison shall be required from the interested parties without imposing a reasonable burden of proof on them.
- (l) In accordance with the provisions governing fair comparison, the existence of a dumping margin during the period of investigation shall be established by the comparison of:
1. a weighted average normal value with a weighted average of all comparable export transactions; or
  2. corresponding normal value and individual export prices on a transaction by transaction basis; or

3. the weighted average normal value with the individual export transactions, in cases where the pattern of export prices differs significantly among different purchasers, regions or time periods and such differences as explained in writing cannot be taken into account appropriately by using methods 1 and 2.
- (m) If possible, an individual margin of dumping shall be determined for each known foreign exporter or producer of the dumped product. In cases where the number of importers, foreign exporters or producers, or the type of the dumped products involved is so large as to make such determination impracticable, the Secretary and the Commission may limit their examination either to: i) a reasonable number of interested parties or products by using statistically valid sampling techniques on the basis of information available to them at the time of the selection; or ii) the largest percentage of volume of exports from the country in question which can be reasonably investigated. Any selection of importers, foreign exporters, or producers or type of the dumped product shall preferably be made in consultation with, and with the consent of, the concerned foreign exporters or producers. However, if a non-selected foreign exporter or producer submits information, the investigation must extend to that importer, foreign exporter or producer unless this will prevent the timely completion of the investigation.

## **Section 12. Determination of Material Injury or Threat Thereof**

- (a) The Secretary and the Commission shall determine the presence and extent of material injury to the domestic industry as a result of the importation of the dumped products on the basis of positive evidence and shall require an objective examination of, but shall not be limited to, the following:
1. The rate of increase and amount of the importation of the dumped products, either in absolute terms or relative to production or consumption in the domestic market;
  2. The effect of the importation of the dumped products on the prices in the domestic market for the like product, that is, whether there has been a significant price undercutting by the dumped products as compared with the price of the like product in the domestic market, or whether the effect of such dumped products is otherwise to depress prices to a significant degree or to prevent price increases which otherwise would have occurred to a significant degree. Price depression shall refer to the extent by which the domestic producer reduced its selling price in order to compete with the dumped product, while price suppression shall refer to the extent by which the dumped product prevented the domestic producer from increasing its selling price to a level that will allow full recovery of its cost of production; and
  3. The effect of the importation of the dumped products on the domestic producers or the resulting retardation of the establishment of a domestic industry producing the like product, including an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry concerned, such as, but not limited to, actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of dumping; and actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.
- (b) The extent of injury caused by the importation of the dumped products on the domestic industry shall be determined by the Secretary and the Commission upon examination of all relevant evidence. Any known factors other than the importation of the dumped products which, at the same time injure the domestic industry, shall also be examined and the injuries

caused by these factors must not be attributed to the dumped products. The relevant evidences may include, but shall not be limited to, the following:

1. the volume and value of imported products not sold at dumping prices;
  2. contraction in demand or changes in consumption patterns;
  3. trade restrictive practices and competition between foreign and domestic producers;
  4. developments in technology; and
  5. export performance and productivity of the domestic industry.
- (c) The effect of the importation of the dumped products shall be assessed in relation to the domestic production of the like product by separate identification of that production based on such criteria as production processes, sales and profits. If such is not possible, the effect of the importation of the dumped products shall be assessed by the examination of the production of the narrowest group or range of products which includes the like product for which the necessary information is available.
- (d) A determination of a threat of material injury shall be based on facts and not merely on allegations, conjectures or remote possibilities. The change in circumstances creating a situation in which the dumping will cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the following shall be considered collectively, inter alia,:
1. a significant rate of increase in the importation of the dumped products into the domestic market indicating the likelihood of substantially increased importations;
  2. sufficient freely disposable, or an imminent, substantial increase in, production capacity of the foreign exporter indicating the likelihood of substantially increased dumped exports in the domestic market, taking into account the availability of other export markets to absorb any additional exports;
  3. whether dumped products are entering at prices that will have a significantly depressing or suppressing effect on domestic prices, and will likely increase demand for further importation of the dumped products; and
  4. inventories of the product being investigated.
- (e) Not one of these factors can, by itself, necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur. In cases where injury is threatened by dumped products, the application of anti-dumping measures shall be considered and decided with special care.

### **Section 13. Voluntary Price Undertaking**

- (a) The anti-dumping investigation may be suspended or terminated without the imposition of provisional measures or anti-dumping duties, upon receipt of the Commission and acceptance by the affected industry, of a satisfactory voluntary undertaking executed by the foreign exporter under oath that he will increase his price or will cease exporting to the Philippines at a dumped price, thereby eliminating the material injury to the domestic industry producing the like product. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. Parties that offer an undertaking shall be required to provide a non-confidential version of such undertaking so that it may be made available to interested parties.
- (b) An undertaking to increase prices or cease importations at dumped prices shall neither be sought nor accepted unless a preliminary affirmative determination of dumping and injury

caused by such dumping has been made. No undertaking of the same nature shall take effect unless it is approved by the Secretary after a recommendation by the Commission.

- (c) An undertaking to increase prices or cease importations at dumped prices may not be accepted if its acceptance is impractical, e.g., if the number of actual or potential foreign exporters is too large or, for other reasons, including reasons of general policy. The foreign exporter shall be informed of the reason for non-acceptance of the proposed undertaking and he shall be given an opportunity to submit his comments.

Even if such undertaking is acceptable, the investigation shall nevertheless be continued and completed by the Commission if the foreign exporter or producer so desires or upon the advice of the Secretary. In such a case, the undertaking shall automatically lapse in the case of a negative finding. However, in instances where the negative determination is due in large part to the existence of a price undertaking, the Commission may require that the undertaking be maintained for at least two (2) years, unless the foreign exporter proves to the Commission that the undertaking is no longer necessary. In the case of an affirmative finding, the undertaking shall continue for only as long as the need exists, and to the extent necessary, to counteract the dumping, but not to exceed five (5) years from the date of the affirmative finding.

Should the investigation be discontinued as a result of the acceptance of an undertaking, this undertaking shall be effective for five (5) years from the date of the acceptance thereof, unless the foreign exporter proves to the satisfaction of the Commission that the undertaking is no longer necessary.

- (d) Undertakings may be suggested but no foreign exporter shall be forced to enter into such an undertaking. Failure of the foreign exporter to offer or accept an invitation for an undertaking shall in no way prejudice the consideration of the case. However, it may be determined that a threat of injury is more likely to be realized if the importation of the dumped product continues.
- (e) A foreign exporter from whom an undertaking has been accepted may be requested to provide monthly information to ensure that the conditions of the undertaking have been fulfilled. The foreign exporter must ensure that future export prices are not less than the level agreed upon in the undertaking. If at any time the dumped products are exported at a price lower than that agreed to in the undertaking, consideration will immediately be given to applying the provisional duty to the shipment, using the best information available in cases where the investigation which led to the undertaking has not been concluded. In case of a breach or withdrawal of an undertaking by any party, a definitive duty shall be imposed in accordance with Section 18 of this IRR; Provided, that the investigation which led to the undertaking was concluded with a final affirmative determination and that the foreign exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment. In case of a violation of an undertaking, definitive duties may be levied on dumped products exported to the Philippines not more than 90 days before the application of the provisional duty except to importations made before the violation of the undertaking.

#### **Section 14. Cumulation of Importation**

When the importation of products from more than one country are simultaneously the subject of an anti-dumping investigation, the Secretary or the Commission may cumulatively assess the effects of such dumped products only if they are convinced that:

- (a) the margin of dumping established in relation to the dumped products from each country is more than the de minimis as defined in Section 9 of this IRR;
- (b) the volume of importation of such dumped products from each country is also not negligible as defined in Section 9 of this IRR; and
- (c) a cumulative assessment of the effects of such dumped products is warranted in the light of the conditions of competition between the imported products, and the conditions of competition between the imported products and the like products.

#### **Section 15. Report of the Commission and Submission of Final Determination to the Secretary**

- (a) Before making a final determination, the Commission shall inform all interested parties in writing of the essential facts under consideration and the initial findings as contained in the draft report, giving due regard to the protection of confidential information. Such disclosure shall be made within three (3) days from the date of completion of the draft report, after which the parties shall be given five (5) days from the date of receipt of the notice to defend their interests in writing.
- (b) The Commission shall conclude its formal investigation and submit a report of its findings, whether favorable or not, to the Secretary within one hundred twenty (120) days from receipt of the records of the case. The Commission shall also furnish the parties concerned with copies of its report.

#### **Section 16. Imposition of the Anti-Dumping Duty**

- (a) The Secretary shall, within ten (10) days from receipt of the affirmative final determination by the Commission, issue a Department Order imposing an anti-dumping duty on the dumped product, unless he has earlier accepted an undertaking from the foreign exporter to increase prices or cease importations at dumped prices. The Department Order shall become executory after the lapse of the period for reconsideration in case no motion for reconsideration has been filed, and upon a negative resolution of the motion for reconsideration in case the same has been filed. He shall furnish the Secretary of Finance with the copy of the Order and request the latter to direct the Commissioner of Customs to collect the definitive anti-dumping duty, in addition to any other duties, taxes and charges imposed by law, on such product.

Simultaneous with the issuance of the Department Order, the Secretary shall furnish copies of the same to the parties concerned.

- (b) Upon receipt of the Order from the Secretary of Finance, the Commissioner of Customs shall order the Collector of Customs concerned to proceed with the final appraisement of the dumped product.
- (c) The Commissioner of Customs shall submit to the Secretary, through the Secretary of Finance, certified monthly reports on the disposition of the cash bond and the amounts of the anti-dumping duties collected.
- (d) In case a cash bond has been filed, the same shall be applied to the anti-dumping duty assessed. If the cash bond is in excess of the anti-dumping duty assessed, the remainder shall be immediately returned to the importer, including interest earned, if any: Provided, That no interest shall be payable by the government on the amount to be returned. If the assessed anti-dumping duty is higher than the cash bond filed, the difference shall not be collected.

- (e) In case of a negative finding by the Commission, the Secretary shall issue, through the Secretary of Finance, after the lapse of the period for the petitioner to appeal to the Court of Tax Appeals, an Order for the Commissioner of Customs to immediately release the cash bond to the importer. All the parties concerned shall also be duly notified of the dismissal of the case.

#### **Section 17. Period Subject to Anti-Dumping Duty**

- (a) An anti-dumping duty may be levied retroactively from the date the cash bond has been imposed and onwards, where a final determination of injury is made, or in the absence of provisional measures, a threat of injury has led to actual injury.
- (b) Where a determination of threat of injury or material retardation is made, anti-dumping duties may be imposed only from the date of determination thereof.
- (c) Notwithstanding the preceding paragraph, an anti-dumping duty may be levied on the dumped product which were imported into the country not more than ninety (90) days prior to the date of application of the cash bond, when the authorities have determined for the dumped product in question that:
  - 1. there is a history of dumping which caused injury or that the importer was, or should have been, aware that the foreign exporter practices dumping and that such dumping would cause injury; and
  - 2. the injury is caused by the massive importation of the dumped product within three (3) months from the initiation of the investigation which, in light of the timing and the volume of the dumped products and other circumstances (such as a rapid build-up of inventories of the imported product), is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied: Provided, That the importers concerned have been given an opportunity to comment.

In determining whether the importation of the dumped product is massive, the Commission shall examine:

- 1. The volume and value of the dumped products;
  - 2. Seasonal trends; and
  - 3. The share in the domestic market accounted for by the dumped products
- (d) No duties shall be levied retroactively pursuant to this Section on dumped products entered for consumption prior to the date of the initiation of the investigation.

#### **Section 18. Application of the Anti-Dumping Duty**

- (a) The amount of the anti-dumping duty shall not exceed the margin of dumping as established by a fair comparison of the normal value and the export price for the dumped product as established under Section 11. 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. In determining such lesser duty, the Secretary or the Commission may also consider, among others, the effect of imposing the full margin of dumping on the welfare of consumers and/or the general public, and other related local industries.
- (b) Even when all the requirements for the imposition of an anti-dumping duty have been fulfilled, the Commission may or may not impose the definitive anti-dumping duty or may suspend its actual imposition. In deciding among the foregoing options, the Commission may



consider the following factors, among others: 1) if the imposition of an anti-dumping duty will result in a political or economic crisis; or 2) if such imposition will cause a severe shortage of the like product in the domestic market. The Commission shall only exercise said prerogative after giving the Secretary and all known interested parties the opportunity to present their views.

- (c) The anti-dumping duty shall be collected, in the appropriate amounts and on a non-discriminatory basis, on imports of like products from all sources found to be dumped and causing injury, except on those imports from sources from which price undertakings have been accepted. The specific supplier of the like product concerned shall be named. If several suppliers from the same country are involved and it is impractical to name all these suppliers, the supplying country concerned may be named. If several suppliers from more than one country are involved, all the suppliers involved may be named, or if this is impractical, all the supplying countries may be named.
- (d) Any anti-dumping duty applied to non-selected foreign exporters or producers shall not exceed:
  - 1. the weighted average dumping margin established with respect to the selected foreign exporter or producer; or
  - 2. the difference between the weighted average normal value of the selected foreign exporters or producers and the export prices of non-selected foreign exporters or producers, where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value:

Provided, That any zero margin, de minimis margin, and margin established using the best information available are disregarded. Individual duties or normal values shall be applied to dumped products imported from any non-selected foreign exporter or producer who has provided the necessary information during the investigation.

- (e) Foreign exporters who did not make themselves known to the Secretary and the Commission or those who did not cooperate sufficiently during the investigation, as well as new foreign exporters, shall be assessed a residual duty or an "all others rate" based on the best information available. The residual duty will cover future importations of the dumped products originating from the same country of export.
- (f) The anti-dumping duty shall be paid either through cash or cashier's/manager's check. All such monies collected shall be deposited by the Commissioner of Customs in a special fund, to be known as the Trade Remedies Fund, created for that purpose.
- (g) New foreign exporters who have not exported the dumped product to the Philippines during the POI may request for an accelerated review provided they are not related to any foreign exporter who is subject to the anti-dumping duty. The application must be submitted to the Commission in writing and must contain:
  - 1. a description of the foreign exporter's product; and
  - 2. the basis of the request.

No anti-dumping duty shall be imposed during the review. A provisional duty may be required to ensure that, in the case of an affirmative finding, the anti-dumping duty can be levied retroactively up to the date of the initiation of the review

- (h) When the domestic industry has been defined as referring to producers in a certain area as provided under Section 3.d.4 of this IRR, an anti-dumping duty shall be levied only on the dumped products consigned for final consumption to that area.

#### **Section 19. Duration and Review of the Anti-Dumping Duty**

- (a) As a general rule, the imposition of an anti-dumping duty shall remain in force only as long as the need exists, and to the extent necessary, to counteract dumping which is causing or threatening to cause material injury to the domestic industry or material retardation of the establishment of such an industry.
- (b) The duration of the definitive anti-dumping duty shall not exceed five (5) years from the date of its imposition, or from the date of the most recent review if that review has covered both dumping and injury, unless the Commission has determined, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or in behalf of the domestic industry at least six (6) months prior to the termination date, that the termination of the anti-dumping duty will likely lead to the continuation or recurrence of dumping and injury. The anti-dumping duty shall remain in force pending the outcome of such an expiry review.

An expiry review shall be initiated when there is sufficient evidence that the expiry of the definitive anti-dumping duty would likely result in a continuation or recurrence of dumping and injury. Such a likelihood may be indicated, for example, by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of the duty or evidence that the circumstances of the foreign exporters, or market conditions, are such that these would indicate the likelihood of further injurious dumping.

In carrying out investigations under this paragraph, the foreign exporters, the representatives of the country of export or origin and the domestic producers and importers shall be provided with the opportunity to comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of the definitive anti-dumping duty would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

The Commission shall cause the publication of a notice of impending expiry of the effectivity of the anti-dumping duty in two (2) newspapers of general circulation on the first quarter of the final year of the period of application of the definitive anti-dumping duty, to give the domestic producers adequate time to lodge a request for an expiry review.

- (c) The Commission may also, *motu proprio* or upon the direction of the Secretary, conduct an interim review of the need for the continued imposition of the anti-dumping duty, taking into consideration the need to protect the existing domestic industry against dumping. Any interested party with substantial positive information may also petition the Secretary for an interim review of the continued imposition of the anti-dumping duty; Provided, that at least one (1) year has elapsed since the imposition of the anti-dumping duty

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the duty is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the duty was removed or varied, or that the existing duty is not, or is no longer, sufficient to counteract the dumping which is causing injury.

In carrying out investigations pursuant to this Section, the Commission may, inter alia, consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results, in removing the injury previously established. In these respects, account shall be taken of all relevant and duly documented evidence in the final determination.

- (d) If the Commission determines that the anti-dumping duty is no longer necessary or warranted, the Secretary shall, upon the recommendation of the Commission, issue a Department Order immediately terminating the imposition of the anti-dumping duty. All parties concerned, including the Secretary of Finance and the Commissioner of Customs, shall be notified accordingly of such termination.

In cases, where the duty is repealed for individual foreign exporters, but not for the country as a whole, such foreign exporters shall remain subject to the proceeding and may, automatically be investigated in any subsequent review carried out for that country pursuant to this Section.

- (e) The provisions of this IRR regarding evidence and procedures, including the conduct of public consultations and public hearings, shall apply to any review carried out under this Section. Any such review shall be carried out expeditiously and concluded not later than one hundred fifty (150) days from the date of the initiation of such review.

#### **Section 20. Motion for Reconsideration**

- (a) No motion for reconsideration shall be allowed on provisional orders under this IRR, including the imposition of provisional duties by the Secretary, in consonance with established rules of procedure.
- (b) A motion for reconsideration in writing may be filed with the Secretary within fifteen (15) days from receipt of the Department Order imposing the definitive anti-dumping duty, for one or more of the following reasons affecting the substantial rights of said party:
  - 1. Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired;
  - 2. Newly discovered evidence, which the aggrieved party could not, with reasonable diligence, have discovered and produced at the public consultations, and which if presented would probably alter the result; or
  - 3. The final anti-dumping duty imposed is excessive, or the evidence is insufficient to justify the final order, or the order is contrary to law.

Such motion for reconsideration shall not be accepted without proof of service thereof to affected parties.

- (c) Comments of the affected parties to the motion for reconsideration may be filed with the Secretary within ten (10) days from receipt thereof.
- (d) Upon receipt of the motion for reconsideration and the comments thereto, the Secretary shall transmit the same within one (1) working day from receipt thereof to the Commission, which shall resolve the same within ten (10) days. Thereafter, the Commission shall transmit its report to the Secretary within one (1) working day from the date of the report.
- (e) Within three (3) days from receipt of the report of the Commission, the Secretary shall issue a formal resolution on the motion for reconsideration based on the report of the Commission.

- (f) No second motion for reconsideration shall be allowed.

#### **Section 21. Judicial Review**

- (a) Any interested party in an anti-dumping investigation who is adversely affected by a final ruling in connection with the imposition of an anti-dumping duty may file with the Court of Tax Appeals, a petition for the review of such ruling within thirty (30) days from his receipt of notice of the final ruling.
- (b) The filing of such petition for review shall not in any way stop, suspend, or otherwise hold the imposition or collection, as the case may be, of the anti-dumping duty on the dumped product. The rules of procedure on petitions for review filed with the Court of Tax Appeals shall be applied.

#### **Section 22. Public Notice**

- (a) The Secretary or the Commission shall inform in writing all interested parties on record and, in addition, give public notice by publishing in two (2) newspapers of general circulation when:
1. initiating an investigation;
  2. concluding or suspending investigation;
  3. making any preliminary or final determination whether affirmative or negative;
  4. making a decision to accept or to terminate an undertaking; and
  5. terminating a definitive anti-dumping duty.
- (b) The public notice shall contain, unless otherwise made available through a separate report, adequate information on the following matters:
1. sufficient explanation on the matters of fact and law and, the reasons which have led to the imposition of the measure, or the reasons for the acceptance of the undertaking, or the reasons for the acceptance or rejection of relevant arguments or claims made by the interested parties;
  2. names of the supplying countries concerned;
  3. description of the product;
  4. margins of dumping established and the full explanation of the reasons for the methodology used;
  5. considerations relevant to the injury determination; and
  6. the main reasons leading to the determination.

#### **Section 23. Report to be Submitted by the Bureau of Customs**

The Secretary shall regularly submit to the Commissioner of Customs a list of imported products susceptible to unfair trade practices. The Commissioner of Customs is hereby mandated to submit to the Secretary not later than the 15th day of each month, reports covering importations of said products, including relevant copies of documents such as but not limited to the following:

- (a) Commercial invoices;
- (b) Bills of Lading;
- (c) Import Entries; and
- (d) Pre-shipment reports.

#### **Section 24. Administrative Support**

- (a) The Departments of Trade and Industry (DTI) and of Agriculture (DA) and the Commission, shall create or designate a special unit within their agencies that will undertake the functions relative to the disposition of anti-dumping cases.
- (b) All anti-dumping duties collected shall be earmarked and deposited in the Trade Remedies Fund which is created for the strengthening of the capabilities of these agencies to undertake their responsibilities.
- (c) The portion of the Trade Remedies Fund representing anti-dumping duties collected on dumped non-agricultural products shall be shared equally by the DTI and Commission, while the portion of the Fund representing collections on dumped agricultural products shall be shared equally by the DA and the Commission. However, all expenses incurred by the Bureau of Customs in the submission of the documents required in Section 23 of this IRR shall be reimbursed before the respective portions of the Trade Remedies Fund are allocated to the DTI, DA, and the Commission.
- (d) The Departments of Finance and Budget and Management, and the Bureaus of Customs and Treasury, together with the DTI, DA, and the Commission, shall jointly promulgate the procedures for the creation, management and utilization of the Trade Remedies Fund.

#### **Section 25. Penalty Clause**

- (a) Complaints against all erring government officials under this Section shall be filed with the Office of the Ombudsman.
- (b) Failure of the concerned government officials herein mentioned to prosecute, investigate, and initiate necessary action against the foreign exporter as provided for in RA 8752 and this IRR, without justifiable cause, shall be a ground for dismissal from office, in addition to the sanctions provided in the Revised Penal Code and the Anti-Graft and Corrupt Practices Act (RA 3019), and other laws.
- (c) Failure of the erring officials of the Bureau of Customs to collect the provisional or definitive anti-dumping duty pursuant to the Department Order of the Secretary and the directive of the Secretary of Finance authorizing its collection shall constitute prima facie evidence of dereliction of duty which shall be punishable by removal from office.

Failure of the erring Customs officials to comply with the submission of the reports and documents required under Section 23, without justifiable reason, shall hold these officials liable. They shall be punished with a fine equivalent to six (6) months' salary or suspension for one (1) year.

- (d) The importer's license or charter to do business shall be revoked for those found guilty of dumping. Further, its officers shall be disqualified from holding official positions in corporations of other business entities in the Philippines.

A fine equal to twice the definitive anti-dumping duty shall likewise be imposed.

#### **Section 26. Transitory Provisions**

The procedural provisions of RA 8752 shall be applied to investigations initiated prior to its effectivity of 4 September 1999.

**Section 27. Repealing Clause**

All rules and regulations, ordinances, executive or administrative orders and such other presidential issuances related to dumping which are inconsistent with any of the provisions of RA 8752 and this IRR are hereby repealed, amended or otherwise modified accordingly.

**Section 28. Effectivity**

This Order shall take effect seven (7) days from publication in two (2) newspapers of general circulation.

**Section 29. Separability Clause**

If any of the provisions of this IRR is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in force and effect.

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