

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

House Bill No. 1353

Introduced by Hon. Del R. De Guzman

EXPLANATORY NOTE

The Constitution mandates that the State shall protect local industries from unfair trade practices. One such unfair practice is the dumping or 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.

The bill seeks to address the many weaknesses found in the Anti-Dumping Law Act of 1999 (Republic Act 8752) viewed by certain quarters of industry to only work to the detriment of local producers.

It restores the method/steps necessary to determine the normal value of the article/s subject of a dumping protest which was removed when R.A. 8752 superseded RA 7843 (Anti-Dumping Law of 1994)

The bill removes the posting of a surety bond by an affected industry or interested party when it files a complaint or petition against dumping. The filing of dumping case already entails a lot of time and resources. Additional requirements on the part of the petitioner will further place him at a serious disadvantage.

It deletes the provision in the Tariff and Customs Code of the Philippines which allows the Tariff Commission to decide whether or not to impose a definitive anti-dumping duty even when all the requirements for the imposition of said duty have been fulfilled, ostensibly to protect the welfare of consumers, the general public, or other related industries.

The welfare of consumers and other sectors are given factors that are assumed and an anti-dumping protest would naturally affect these sectors. Therefore, these factors are out of place in an anti-dumping law, as they are properly addressed in the tariff adjustment procedure under Section 402 of the Tariff and Customs Code, which properly deals with liberalization and free trade. An anti-dumping protest is aimed at a specific unfair trade act or importation. Just like a criminal action in court, its result cannot be influenced by the consideration inserted into R.A. No. 8752.

When consideration of the welfare of other related industries comes into play, no anti-dumping protest can ever be successfully prosecuted because any importation below normal price, especially a dumping price, will naturally benefit related (downstream) industries. The imposition of dumping duties would necessarily be against their welfare and commercial interest. The Anti-Dumping Act of 1999, unless amended, will prevent the successful prosecution of any protest that may be filed thereon.

The bill further provides that 50% of the dumping duties collected from a particular dumping protest shall be returned to the petitioning companies through the industry association concerned. In this manner, affected industries will be encouraged to be vigilant in guarding against dumping. Government also stands to benefit from increased revenue arising from proven dumping cases.

For these reasons, the early approval of this bill is earnestly sought.

DEL R. DE GUZMAN

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HOUSE BILL NO. 1353

Introduced by ***Hon. Del R. De Guzman***

AN ACT PROVIDING GREATER PROTECTION TO LOCAL INDUSTRIES THROUGH THE IMPOSITION OF ANTI-DUMPING DUTY, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK 1 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED BY REPUBLIC ACT NO. 8752

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

Section 1. Section 301, Part 2, Title II, Book I of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended 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 the law on 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.]

"THE NORMAL VALUE OF AN ARTICLE SHALL BE THE COMPARABLE PRICE IN THE ORDINARY COURSE OF TRADE FOR THE LIKE ARTICLES WHEN DESTINED FOR DOMESTIC CONSUMPTION WHICH FOR THIS PURPOSE OF THIS ACT, MEANS THE COUNTRY OF PRODUCTION OF MANUFACTURE.

"IF THE NORMAL VALUE OF AN ARTICLE CANNOT BE DETERMINED, THE FOLLOWING RULES SHALL APPLY:

"IF THE ARTICLE IS NOT BEING SOLD IN THE ORDINARY COURSE OF TRADE IN THE DOMESTIC MARKET OF THE EXPORTING COUNTRY OR IF THE SALE DOES NOT ALLOW A FAIR COMPARISON OR IF THE NORMAL VALUE IS NOT AVAILABLE OR UNRELIABLE BECAUSE OF ASSOCIATION OR A COMPENSATORY ARRANGEMENT BETWEEN THE EXPORTER AND THE IMPORTER OR A THIRD PARTY OR THE AGENCY PROVIDING THE NORMAL VALUE IS STATE-CONTROLLED OR JOINTLY OWNED BY THE STATE OR THE EXPORTING COUNTRY, OR WHERE PRODUCTS ARE NOT IMPORTED DIRECTLY FROM THE COUNTRY OF PRODUCTION THEN, THE NORMAL VALUE SHALL BE BASED ON THE HIGHER OF VALUES DETERMINED FROM ANY OF THE FOLLOWING METHODS, SUCH AS BUT NOT LIMITED TO, THE NORMAL VALUE OF LIKE ARTICLES IN A PROXY COUNTRY AT THE SAME STAGE OF ECONOMIC DEVELOPMENT OF THE INDUSTRY PRODUCING LIKE PRODUCTS, OR THE COST OF PRODUCTION IN THE COUNTRY OF PRODUCTION OR MANUFACTURE WHICH IS BASED ON C AND F PRICE OF SUCH ARTICLES INCLUDING DUTIES, SURCHARGES, AND TAXES WHEN IMPORTED BY AN IMPORTER IN THE COUNTRY OF PRODUCTION."

" x x x

"(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 the 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 of 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 products in the domestic market, and the consequent impact of the imports on the domestic industry.

"Philippine Trade, Agriculture or Finance attaches and of the Consular Officials of Attaches 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.]

"x x x

"(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. FIFTY PERCENT OF THE DUMPING DUTIES COLLECTED ARISING FROM A PARTICULAR DUMPING PROTEST SHALL BE RETURNED TO THE PETITIONING COMPANY(IES) THROUGH ITS (THEIR) INDUSTRY ASSOCIATION AS MAY BE ACCREDITED BY THE DEPARTMENT OF TRADE AND INDUSTRY OR THE DEPARTMENT OF AGRICULTURE, AS THE CASE MAY BE. [All anti-dumping duties collected] THE BALANCE OF FIFTY PERCENT shall be earmarked for the strengthening of the capabilities of these agencies to undertake their responsibilities under this Act."

Sec. 2. 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. 3. 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.4. Effectivity Clause. - This Act shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,