


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 1809

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Introduced by Honorable Darlene Magnolia R. Antonino-Custodio

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EXPLANATORY NOTE

*Cabotage* as defined in Black's Law Dictionary is a nautical term to denote navigation from cape to cape along the coast without going out into the open sea. The Philippine Legal Encyclopedia defines it as "the coasting trade," i.e. "carriage between ports along its coasts. Accordingly, "a State, may, in the absence of a treaty to the contrary, reserve for its own vessels its coastwise trade to the exclusion of foreign vessels." Put more simply, it disallows foreign vessels from engaging in coastwise trade.

In the Philippines, the cabotage principle is embodied in Section 902 of the Tariff and Customs Code of the Philippines, viz:

> Section 902. Vessels Eligible for Coastwise Trade. – The right to engage in the Philippine coastwise trade is limited to vessels carrying a certificate of Philippine Registry.

which was incorporated in Republic Act No. 5173, as amended.

A related provision, Section 1009, is also contained in the aforesaid Code.

This practice reserves coastwise trade to national flag carriers. It prohibits foreign vessels from directly transporting domestic cargo between two ports other than those designated international ports.

Instead of docking directly at its destination, the export and import cargoes still need to be loaded to another inter-island shipping vessel. This trading process costs more in terms of handling and freight services (e.g. thru-move and feedering costs) which greatly contribute to the substantial losses in profits for exporters and importers who have to transship their products from one Philippine port to another.

Cabotage means additional shipping costs as they have to go through at least three (3) stages before they may be shipped out of the country: shipment from provincial ports to the port of Manila; from the port of Manila to the feeder ports and finally, from any of the feeder ports to the final port of destination.

This policy limits competition and encourages inefficiency among local vessel operators. Thus, this barrier in foreign trade must be eliminated. Foreign ships must be allowed to engage in transshipment of export and import cargoes with the same rules and regulations that apply to domestic companies.

With the archipelagic nature of our country, freight is one of the most important structural supports of the local economy, providing the backbone of trade. As a key player in the country's local economy, the freight industry must be made reliable and efficient at fair and reasonable costs.

This proposed bill provides a stronger and clearer basis for foreign vessels to provide the transshipment services needed by our local exporters and importers. It provides a policy and a legal framework that is in perfect accord with the liberal interpretation of Section 1009 of the Tariff and Customs Code in view of the growth and complexities of modern shipping particularly the emergence of the multi-modal transport.

A foreign vessel transporting foreign goods from a local port of transshipment to a local port of destination shall not be construed as engaging in coastwise trade. Imported goods loaded at the port of transshipment shall be considered as foreign cargoes since they have not reached the port of destination. In fine, the determining factor is the final port of destination of goods regardless of the number or mode of transport and the nature of cargoes.

This proposed policy will help ensure an adequate, efficient and price-competitive shipping service that will help Filipino exporters and importers compete effectively in the international market and will give the Philippines a great comparative advantage in trade.

In view of the foregoing considerations, approval of this bill is earnestly requested.



DARLENE MAGNOLIA R. ANTONINO-CUSTODIO

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AN ACT
ALLOWING AN INTERNATIONAL CARGO VESSEL TO SHIFT CONTAINERS OF ANY FOREIGN LINES AND THE TRANSSHIPMENT OF CARGO HEADED TO AND FROM ANY PHILIPPINE OUTPORT, AMENDING FOR THE PURPOSE "THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES".

*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 "**Philippine Export and Import Freight Shipping Assistance Act of 2004.**"

SEC. 2. As used in this Act, the terms:

1. *Coastwise trade* means the sale and/or exchange of goods, articles, commodities or merchandise which are neither designated nor classified as export cargo nor import cargo as herein defined;
2. *Philippine vessels* means vessels duly registered and documented in the Philippine registry;
3. *Foreign vessels* means vessels registered and documented in registries other than that of the Philippines;
4. *Cargo*
    A. *Domestic Cargo* means cargo that is of Philippine origin intended for local consumption, or those which have not been duly declared for exportation to the Bureau of Customs (BOC) at the port of origin, or

those of foreign origin but which have been entered and cleared by the BOC.

B. *Foreign Cargo* shall be classified as follows:

a. *Export Cargo* refers to goods, articles, commodities or merchandise duly declared to the BOC at the port of origin as cargoes for foreign shipment to a foreign country.

b. *Import Cargo* refers to goods, articles, commodities or merchandise of foreign origin which are intended to be cleared at the final port of destination in the Philippines and has not been cleared by the BOC. For this purpose, the term "cleared" shall mean the compliance with the requirements of the BOC for the release of import cargoes which include but not limited to the filing of import entry and payment of duties and taxes unless otherwise exempt therefrom.

5. *Foreign port* means a port or place outside the jurisdiction of the Philippines.
6. *Port of Entry* means a domestic port which is open to both foreign and coastwise trade.
7. *Principal Port of Entry* means the chief port of entry of the collection district wherein it is situated and is the permanent station of the Collector of such port.
8. *Sub-ports of entry* means those ports granted by the BOC allowing a foreign vessel engaged in foreign trade to load/unload, or, accept and process export or import cargoes in a principal/sub-port of entry.
9. *Container* means a ship's gear used for the conveyance, transport and protection of cargoes.

SEC. 3. The Tariff and Customs Code of the Philippines, as amended, is hereby further amended by inserting a new section to be denominated as Section 905 to read as follows:

SECTION 905. VESSELS ELIGIBLE FOR COASTWISE TRADE. – THE RIGHT TO ENGAGE IN THE PHILIPPINE COASTWISE TRADE IS LIMITED TO VESSELS CARRYING A CERTIFICATE OF PHILIPPINE REGISTRY.

COASTWISE TRADE SHALL NOT EMBRACE OR COVER THE GOODS, ARTICLES, COMMODITIES OR MERCHANDISE CLASSIFIED OR DESIGNATED AS FOREIGN CARGOES AS HEREIN DEFINED.

SEC. 4. Section 1009 of the same Code is hereby amended to read as follows:

"Sec. 1009. Clearance of Foreign Vessels To and From Coastwise Ports. – Passengers or articles arriving from abroad upon a foreign vessel may be carried by the same vessel through any port of entry to the port of destination in the Philippines; and passengers departing from the Philippines or articles intended for export may be carried in a foreign vessel through a Philippine port.

Upon such reasonable conditions as he may impose, the Commissioner may clear foreign vessels for any port and authorize the conveyance therein of either articles or passengers brought from abroad upon such vessels; and he may likewise, upon such conditions as he may impose, allow a foreign vessel to take cargo and passengers at any port and convey the same upon such vessel to a foreign port.

THIS CLEARANCE PERMITTING VESSELS ENGAGED IN FOREIGN TRADE TO LOAD OR UNLOAD FOREIGN CARGOES TO AND FROM PRINCIPAL PORTS OF ENTRY/SUB-PORTS IN THE COUNTRY SHALL INCLUDE THE FOLLOWING INSTANCES:

1. ALLOWING AN INTERNATIONAL CARGO VESSEL TO SHIFT EMPTY CONTAINERS OF ANY FOREIGN LINES IF SAID VESSEL REGULARLY CALLS AT MANILA AND PROCEEDS TO PHILIPPINE OUTPORTS;
2. ALLOWING TRANSSHIPMENT BY AN INTERNATIONAL VESSEL OF CARGO COMING FROM OR HEADED FOR A FOREIGN PORT TO AND FROM ANY PHILIPPINE OUTPORT."

SEC. 5. Within sixty (60) days from the approval of this Act, the Secretary of Finance, in consultation with the Bureau of Customs (BOC), the Maritime Industry Authority (MARINA), the Philippine Shipper's Bureau and Philippine Coast Guard, shall promulgate the rules and regulations necessary to effectively implement the provisions of this Act.

SEC. 6. All laws, decrees, administrative orders, rules and regulation or other issuances, or part thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 7. If any of the provisions of this Act is declared unconstitutional or invalid by a competent court, the other provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 8. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation, whichever comes earlier.

Approved,