

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Second Regular Session

House Bill No. **7892**



Introduced by Representative Arthur Yap

AN ACT ESTABLISHING GUIDELINES FOR THE APPLICATION OF LOCAL CHARGES (ORIGIN AND DESTINATION FEES) IMPOSED BY INTERNATIONAL SHIPPING LINES TO COMPLY WITH EXISTING LAWS AND INTERNATIONAL STANDARDS (INCO TERMS)

Explanatory Note

It is the policy of the State to protect the interests of the public, promote general welfare and therefore establish particular standards for the local and destination charges imposed by international shipping lines to exporters, importers, and consumers in the Philippines to comply with existing Philippine law and international standards.

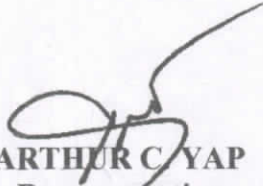
The issue of excessive questionable international shipping lines' destination charges was raised by the private sector. In general, international shipping lines often do not disclose "destination charges" to shippers and "origin charges" to consignees, in their quotations, thereby hiding the sum total of the freight/transportation cost to both parties in interest. These practices avoid transparency and defeats the aspiration of the Philippines to foster a fair market competition and achieve a vibrant and inclusive economy, and advance consumer welfare.

Based on a Report prepared by the National Competitiveness Council – Transport, Infrastructure, and Trade Logistics (NCC TITL) Committee, in collaboration with the Export Development Council – Networking Committee on Transport and Logistics (EDC NCTL), Supply Chain Management Association of the Philippines (SCMAP), Philippine Confederation of Exporters and Importers (PHILEXPORT), Philippine Chamber of Commerce and Industry – Transport, Infrastructure, and Logistics Committee (PCCI TILC), Chamber of Customs Brokers Inc. (CCBI), Philippine International Seafreight Forwarders Association (PISFA), and the Mindanao Development Authority (MINDA), indicate that predominantly for the intra Asia trade ocean freight, on the average only accounts for 39% of the total amount paid to international shipping lines (Carriers) for imports while the so-called "destination and origin charges" levied to Philippine importers by the Carriers account for 61%. For exports, freight on the average only accounts for 25% of the total amount paid to international shipping lines (Carriers) while the so-called "origin and destination" charges" levied to Philippine exporters by the Carriers account for 75%.

These so-called "surcharges" have an enormous impact (economic burden) on the economy – (a) it undermines the country's export competitiveness by increasing the cost of importing raw materials and intermediate goods. Hardest hit by these costs are the small exporters and importers (SMEs) because larger and regular importers and exporters are able to negotiate for better rates and terms; (b) it undermines the competitiveness of domestic producers (vis-à-vis imported products) by increasing the cost of importing raw materials and intermediate

products; (c) it makes domestic consumers (Filipinos) pay a higher price for imported products (for final consumption) since "added" import cost are incorrectly passed on to them; (d) by transferring cost from the foreign shippers to the consignees (Philippine importers), the government may lose revenues from income taxes as the consignees will declare these charges as costs and allowable expense in their books thereby reducing their taxable income; and (e) it impairs the right of the government to collect the right amount of taxes from importers if those charges by their nature being "freight" are miss-declared as "something else" and are NOT added to the dutiable landed cost of imports in violation of prevailing tariff and customs law of the Philippines which provides *inter alia*, that the "cost of transport" of the imported goods from the port of exportation to the port of entry in the Philippines shall be added to the price actually paid or payable for the imported goods in computing the dutiable value of the importation.¹ It may be further argued that these charges are not only excessive but undefined as to their nature of being either freight, recoverable actual cost, or penalties.

Under this Bill, the government asserts its inherent right to (a) enforce applicable Philippine law; (b) collect the correct rate of duties and taxes on importations by transparently including the cost of transportation on the dutiable value of the importations; (c) collect the taxes due on revenue generated by international shipping lines for activities and corresponding income generated within the Philippines in accordance with the pertinent provisions of the Internal Revenue Code (RA 8424 s. 1997 *as amended*); (d) make sure that business is conducted based on internationally recognized standards agreed by the contracting trade partners; and, (e) protect the public from arbitrary, compulsive and indiscriminate charges incorrectly collected from parties not subject of any contract under duress.



ARTHUR C. YAP
Representative

¹Section 701 of Republic Act No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA)

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SHIPPING LINES TO COMPLY WITH EXISTING LAWS AND INTERNATIONAL
STANDARDS (INCO TERMS)**

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

Section 1. Declaration of Policies. – It is the policy of the State to protect the interests of the public, promote general welfare and to establish standards of conduct for business and industry particularly in the local and destination charges imposed by international shipping lines to exporters, importers, and consumers in the Philippines. Towards this end, the State shall implement measures to achieve the following objectives:

- i. protection against deceptive, unfair and unconscionable sales, services, acts and practices and make the local transactions of international shipping lines transparent to the public;
- ii. adherence to the International Commercial Terms (INCO Terms) on the transport of goods that are internationally used and accepted for international and domestic trade;
- iii. upholding the basic legal principles of independence of each and every contractual transactions as well as privity of contractual relations between parties to curb practices of offsetting and indiscriminate and unwarranted imposition liens by international shipping lines;
- iv. create an industry whereby competitive rates of freight are offered to Philippine importers by international shipping lines and foster a culture of fair competition, transparency and expand economic opportunities inclusively for all.
- v. assert the right of the State to collect the right amount of taxes on the revenue generated by international shipping lines for activities and corresponding income generated within the Philippines

Section 2. Definition of Terms. – As used in this Act, the term:

- (a) **BILL OF LADING** - The official legal document that represents ownership of cargo; the negotiable document to receive cargo; and, a document that establishes the terms of a contract between a shipper and the shipping line. It serves as a document of title, a contract of carriage and a receipt for goods.
- (b) **CONSIGNEE** - A person or company to whom commodities are shipped.
- (c) **CONTAINER DEPOSIT** – An amount posted with shipping lines or their ship agent or collection agent upon the pick up or withdrawal of the container from the port of container yard. It is a deposit to be refunded conditioned on the return of the container to the shipping line free from damages excluding the usual wear and tear.

- (d) CONTAINER VAN – A reusable steel boxes used for storage of cargoes to be transported for loading into a vessel, a rail car, truck or stacked in a container depot. Containers may be ventilated, insulated, refrigerated, flat rack, vehicle rack, open top, bulk liquid or equipped with interior devices.
- (e) DEMURRAGE – An amount charged by the shipping line if full and loaded containers are not collected by the customers and remains in the terminals or container yards after the lapse of the allowable free time.
- (f) DESTINATION CHARGES - The charges collected by shipping lines at the time of issuing delivery order to consignee to take delivery goods at port of destination.
- (g) DETENTION – An amount charged by the shipping line per day once customers have collected to empty the containers but do not return the empty containers to the depots after specific free time.
- (h) FREIGHT - The cost of transporting goods (cargoes) from point A (country of origin) to point B (country of destination). International shipping lines are paid for the sea transport service they provide.
- (i) FREIGHT COLLECT – When stated in a Bill of Lading it indicates that the freight for the shipment shall be paid by the importer at destination.
- (j) FREIGHT PREPAID - When stated in a Bill of Lading it indicates that the freight for the shipment shall be paid by the shipper/exporter at origin.
- (k) INCOTERMS (International Commercial Terms) - A series of three-letter, pre-defined commercial terms developed by the International Chamber of Commerce (ICC) relating to international contractual sales practices. It is intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods. Moreover, INCOTERMS rules are designed to reduce or remove altogether uncertainties arising from different interpretation of the rules in different countries. As such they are regularly incorporated into sales contracts worldwide and are accepted by governments, legal authorities, and practitioners worldwide.
- (l) INDIRECT LIEN – Imposition of a lien on a property, either real or personal that is subject of a separate transaction or contract to secure the payment of some debt or obligation subject of another independent and separate contract or transaction.
- (m) INTERNATIONAL SHIPPING LINE (or CARRIER) - Any person or entity who, in a contract of carriage, undertakes to perform or to procure the performance of carriage of goods by sea, or inland waterway or by a combination of such modes that are calling the ports of the Philippines.
- (n) LIEN - It signifies a legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation.
- (o) ORIGIN CHARGES – The charges collected from shipper by shipping lines while releasing bill of lading after completion of exports customs clearance procedures at port of origin.
- (p) SHIPPER - The person or company who is usually the supplier or owner of commodities shipped. Also called Consignor.
- (q) SHIPPING AGENT and GENERAL AGENT – For purposes of this Act, shall mean a ship agent appointed by the ship owner or carrier in the liner service for all voyages and covered by a General Agency Agreement whereby the agent assumes the role and responsibility of its principal within the Philippine territory including but not limited to solicitation of cargo and freight, payment of discharging or loading expenses, collection of shipping charges and issuing/releasing bills of lading and cargo manifest.
- (r) TERMINAL HANDLING CHARGE - is a charge for handling services performed at the terminal. In general, it means the movement of containers within the terminal and the use of its facilities.

Section 3. Coverage. – This Act shall apply to all international shipping lines (“carriers”) that call at Philippine ports to load and unload foreign cargoes (imports and exports) including shipping agents; and general agents of the international shipping lines that act in behalf of international shipping lines in the collection of container deposits, demurrage, detention and other local and destination charges.

Section 4. Destination and Local Charges. –

- 5.1 All international shipping lines that call at Philippine ports are mandated to justify the collection of destination charges and local charges; to clarify the nature thereof and explaining the corresponding local services rendered in exchange for such charges with the objective of separating and identifying what are the destination charges or local charges being collected that are considered local services activities and are apart from the freight paid to the shipping lines.

For this purpose, all international shipping lines shall cause the publication at their expense, the nature of these destination charges and terminal handling fees in major newspapers and posted in their respective websites within one (1) month following the effectivity of this Act.

- 5.2 For the public good and transparency all freight quotations for imports as well as exports must include all charges from port to port inclusive of all origin and destination charges and indicating the party who is responsible to pay the charges (Shipper or Consignee) in accordance with INCOTERMS of the shipment. This will likewise serves the purpose of correctly calculating the correct duties and taxes imposable on importations in accordance with law.
- 5.3 The quoted freight rates shall be inclusive of all charges, such as but not limited to terminal handling cost (THC), container imbalance cost (CIC), emergency cost recovery charge (ECRC), Bunker Price Adjustments (BPA). No origin and destination surcharges other than freight shall be charged by international shipping lines to Philippine consignees if the Philippine consignee does not have any contractual relationship with the Carriers, and/or are not obligated to pay them under INCOTERMS.

As a general rule, if the INCOTERM is in the nature of "Freight Prepaid" then all charges due under INCOTERM shall be collected and paid by the shipper at origin. If the INCOTERM is "Freight Collect" then all charges due under INCOTERM shall be borne and paid by the consignee at destination.

- 5.4 All revenues generated by international shipping lines for destination charges generated for local services within the Philippines shall be imposed with the appropriate taxes (income tax and VAT) in accordance with the applicable provisions of the National Internal Revenue Code of the Philippines.

Section 5. Container Deposits, Demurrage and Detention Charges

- 5.1. *Container Deposits*² - All international shipping lines including, shipping agents and general agents shall implement an expeditious procedure in refunding container deposits upon the return of empty containers by consignees. For this purpose, all container deposits posted with shipping lines including, shipping agents and general agents in behalf of their principal shall refund the amount of container deposit posted with them within a period of fifteen (15) days following the receipt of the empty containers in the yard or container terminal of the shipping line.
- 5.2 *Demurrage and Detention Charges* - The cost of recovery of all international shipping line for detention and demurrage charges shall be limited to the actual lease cost rate per day beyond the allowable free time granted by the shipping line to the consignee but under no circumstances to exceed the depreciated market value of the container.
- 5.3. *Container Cleaning* - A standard tariff schedule shall be published and disseminated to the public copy furnishing the Department of Trade and Industry (DTI) and Maritime Industry

²Container deposits are not payments for services of shipping lines, they are funds posted and entrusted to shipping lines for safekeeping to be refunded to the consignee upon the return of the empty container to their possession.

Authority (MARINA) by international shipping lines that will serve as uniform basis for charging container that demonstrably in need of cleaning.

5.4. *Prohibited Acts* – All international shipping lines are prohibited from doing directly or indirectly any of the following acts that are contrary to laws governing obligations and contracts:

- (i) Impose an indirect lien and hold the release of the shipment of a consignee for the reason that the consignee have an outstanding demurrage and detention collectibles from the consignee corresponding to a previous and different transaction with the shipping line.
- (ii) Withhold and hold the refund of container deposits posted by the consignee for returned empty containers for the reason that the consignee have an outstanding demurrage and detention collectibles from the consignee corresponding to a previous and different transaction with the shipping line.

Section 6. Penalties. –

6.1. Violations of this Act shall be dealt with in accordance with the applicable provisions of Republic Act 7394 s. 1992 and Republic Act 8424 s. 1997 as amended.

6.2. A pending administrative case against violators shall not be construed as a bar for the prosecution of a civil or criminal case against violators in accordance with law.

Section 7. Construction. – The best interest of the consuming public shall be considered as paramount in the interpretation and implementation of the provisions of this Act including subsequent policy guidelines or memorandum circulars to be issued pursuant to the mandate of this Act.

Section 8. Separability. – If for any reason any provision of this Act or any portion thereof or the application of such provision or portion thereof to any person, entity, group or circumstances is declared invalid or unconstitutional, the remainder of this Act shall not be affected by such pronouncement.

Section 9. Repealing Clause. – All laws, decrees, orders and issuances or parts thereof inconsistent herewith, are deemed repealed or modified accordingly.

Section 10. Effectivity. – This Act shall take effect thirty (30) days following the completion of its publication in the Official Gazette and/or in a newspaper of general circulation and/or filing of three (3) copies hereof with the UP Law Center pursuant to Memorandum Circular 11 dated 09 October 1992 of the Office of the President.

Approved.