NINETEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 10507

EXPLANATORY NOTE

Excessive and unnecessary fees, charges and surcharges imposed as origin and destination charges as well as unconscionable fees imposed on the management of empty containers by international shipping lines undermine the country's competitiveness. These charges being imposed and collected at will by international shipping lines have enormous impact on the economy as it (a) increases the cost of importing raw materials and intermediate goods; (b) escalates the prices paid by the domestic consumer; (c) impairs the government's collection of correct taxes; and, (d) undermines the privity of obligations and contracts principle.

This bill seeks to ensure that the Philippine Government asserts its inherent right to implement and enforce compliance with existing local and international consumer trade laws; to protect the interests of the consumer, promote general welfare and to establish standards of conduct for business and industry as well as enforce the compliance with International Commercial Terms (INCOTERMS) for the protection and fair treatment of Philippine domestic manufacturers, exporters and importers.

In view of the foregoing, immediate approval of this measure is earnestly sought.

RUFUS B. RODRIGUEZ

NINETEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 10507

AN ACT
ENHANCING THE COMPETITIVENESS OF PHILIPPINE MARITIME TRADE BY STRENGTHENING THE OVERSIGHT FUNCTIONS OF RELEVANT GOVERNMENT AGENCIES OVER THE IMPOSITION OF SHIPPING CHARGES BY INTERNATIONAL SHIPPING LINES AND INSTITUTIONALIZING MECHANISMS FOR THE EFFICIENT MOVEMENT OF GOODS

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

SECTION 1. *Short Title*. – This Act shall be known as the "*International Maritime Trade Competitiveness Act.*"

SEC. 2. *Declaration of Policy and Objectives.* – It is hereby declared the policy of the State to promote industrialization through industries which are competitive in both domestic and foreign markets. In pursuit of this policy, the State hereby recognizes that providing access to an efficient and reliable transport and logistics services is a key strategy towards enhancing the competitiveness of Philippine products.

The State further recognizes the need to ensure a sound regulatory environment that would promote competition among transport and logistics providers to improve service quality and reduce cost. It is, likewise, cognizant of the need to maintain a balance between transportation regulation and investment promotion and to ensure that transport and logistics providers can obtain a reasonable return on their business operations.

The State also recognizes the sanctity of commercial contracts which lay down the obligations and risks assumed by the parties to facilitate fair, harmonious and convenient trade negotiations and movement of goods.

Towards this end, the following objectives shall be pursued:

a) Protect Filipinos against deceptive, unfair, and unconscionable acts and practices;

b) Promote transparency in the transactions of international logistics service providers, including international shipping lines; Ensure proper government oversight over the imposition of domestic charges by international shipping lines and related business practices;

c) Empower government institutions in their roles of promoting an efficient, competitive, and reliable logistics services; and

d) Formulate policies and develop programs that would redound to the development of the transport and logistics sector in support of domestic and international trade.

SEC. 3. *Definition of Terms.* – As used in this Act:

a) *Anchorage* refers to a place with sufficient depth of water where vessels berth within the harbor;

b) *Bill of Lading* refers to a document issued by a carrier that lists goods being shipped and specifies the terms of their transport;

c) *Cargo throughput* refers to the total volume of cargo discharged and loaded at the port. It includes breakbulk, liquid bulk, dry bulk, containerized cargo, transit cargo, and transshipment;

d) *Consignee* refers to the party appearing in the transport document to whom delivery may be lawfully made in accordance with the contract of carriage;

e) *Container deposit* refers to the amount posted with shipping lines, freight forwarders, customs brokers and logistics operators or their collection agent upon the pick up or withdrawal of the container from the port of container yard;

f) *Container yard* refers to a designated area where containers and chassis are received, stacked, and dispatched;

g) *Containerized cargo* refers to a cargo packed in vans or containers for easy handling and transporting of the same as a unit;

h) *Customs broker* refers to any person who is a bona fide holder of a valid Certificate of Registration or Professional Identification Card issued by the Professional Regulatory Board and Professional Regulation Commission pursuant to Republic Act No. 9280, otherwise known as the “Customs Brokers Act of 2004, as amended;”

i) *Delivery order* refers to a document issued by the shipping line releasing the cargo to the consignee mentioned in the Bill of Lading upon payment of all handling charges;

j) *Demurrage fee* refers to the amount charged by the shipping lines, freight forwarders, customs brokers, and logistics operators if full and loaded containers are not collected by the customers and remain inside the port, terminal, or container yard after the lapse of the allowable free time;

k) *Detention charges* refer to the amount charged by the shipping lines, freight forwarders, customs brokers, and logistics operators per day once customers have collected the empty containers from outside the port, but do not return the empty containers to the depots after the specified free time;

l) *Dwell time* refers to the number of hours spent by a vessel from waiting time to berthing, and until the time of completion of the un-berthing process on final departure;

m) *Freight forwarder* refers to an entity that acts as a cargo intermediary and facilitates transport of goods on behalf of its client without assuming the role of a carrier, or assuming such role in the case of non-vessel owning common carrier (NVOCC), which can also perform other forwarding services, such as booking cargo space, negotiating rates, preparing documents, advancing freight payments, providing packing or crating, trucking and warehousing, engaging as an agent or representative of a foreign non-vessel operating as a common carrier or cargo consolidator named in a master bill of lading (BL) as consignee of a consolidated shipment, and other related undertakings;

n) *Inland container depot* refers to an intermodal transport terminal, situated outside the ports and equipped for handling and temporary storage of cargo, which is authorized by the Bureau of Customs (BOC) to handle the processing, examination, and clearance of arriving laden containers;

o) *International commercial terms* refer to a set of internationally-recognized rules which define the responsibilities of sellers and buyers. These specify who is responsible for paying for and managing the shipment, insurance, documentation, customs clearance, and other logistical activities;

p) *International shipping line or carrier* refers to 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 by issuing its own BL and assuming responsibilities for the shipments that call at the international ports of the Philippines;

q) *Last Mile logistics* refers to the final step of the delivery process from a distribution center or facility to the end-user;

r) *Logistics service providers* refers to third-party logistics providers who are outsourced to manage a company's warehousing, distribution and transportation of freight;

s) *Non-containerized cargo* refers to goods shipped in pieces separately without the use of a container that include goods that are shipped in crates, bags, boxes, drums, and barrels and which come in extremely large sizes or dimensions;

t) *Non-vessel operating common carrier* refers to an entity that provides a point-to-point service, without owning a vessel, and which may include several modes of transport of full container load (FCL) shipments or undertakes groupage of less than container load (LCL) shipments issues its own BL, and assumes responsibilities for the shipments;

u) *Port congestion* refers to a situation at the port, as determined by the Philippine Ports Authority (PPA) based on the guidelines and parameters set by the MARINA Board (Board), that effectively stalls the movement of cargoes leading to adverse economic consequences;

v) *Service contract* refers to a contract between a shipper and a carrier or conference which contains the terms and conditions respecting the transport of goods from a foreign port to a Philippine port or vise-versa;

w) *Shipper* refers to the person or company named in the shipping documents as the party responsible for initiating the shipment and entering into a transport contract with the carrier;

x) *Port or terminal operator* refers to an entity that owns or leases ports or terminals and is involved in managing the movement of cargo containers between cargo ships, trucks and freight trains, and in optimizing the flow of goods through customs to minimize the amount of time a ship spends in port. A port or terminal operator may be a public or private entity.

SEC. 4. *Coverage.* – This Act shall apply to all aspects affecting the imposition of shipping charges by international carriers arriving at or originating from Philippine ports.

SEC. 5. *Transparency of Freight and Other Charges*. – Upon the effectivity of this Act, all port or terminal operators, international carriers, NVOCCs and forwarders shall inform the Maritime Industry Authority (MARINA) of their regular shipping charges and fees and publish the same in a newspaper of general circulation: *Provided,* That the publication requirement is deemed complied with by the establishment and management of a real-time online website accessible to the public. No charges or fees shall be imposed beyond the published rates.

No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than thirty (30) days after the submission to the MARINA of such new shipping rates, except when allowed by MARINA for reasonable or good cause: *Provided,* That a change in an existing rate resulting in a decreased cost to the shipper may become effective upon publication and filing.

SEC. 6. *Imposition of Local Shipping Charges by International Carriers*. – No local charges or surcharges, except for internationally-accepted surcharges, fees for value-added services, and behavioral charges such as late payment fee, container insurance, shall be charged by international shipping lines or their agents, freight forwarders and NVOCCs to Philippine consignees and shippers. The imposition and parameters of such imposition must be clearly defined in the contract of carriage and subscribed by the shipper or consignee.

SEC. 7. *Agreements*. – Within ninety (90) days after the effectivity of this Act, certified copies of all existing agreements between and among international carriers operating in Philippine ports and agreements among Philippine port or terminal operators as well as among one or more Philippine port or terminal operators and one or more international carriers operating in Philippine ports that affect Philippine maritime trade, shall be submitted to the MARINA.

Any agreement or any amendment thereto shall become effective thirty (30) days after such submission: *Provided,* That, during the effectivity of such agreement, if the MARINA determines that the same is likely to produce an unreasonable reduction in transportation services or an unreasonable increase in transportation cost, it may refer the same to the Philippine Competition Commission (PCC) for appropriate action.

SEC. 8. *Detention Charges and Demurrage Fees.* – No detention charges in the return of empty containers shall be imposed by shipping lines when the delay is caused by them. For this purpose, international shipping lines must ensure that the delivery order always indicates the container depot where the empty container owned by the shipping lines must be returned.

Any demurrage fee or detention charge shall not constitute a direct or indirect lien on container deposits or on other cargoes or shipments covered by a separate transaction of the same shipper or consignee.

SEC. 9. *Container Deposits*. – The MARINA may allow the imposition of container deposits only if:

a) the forwarders or agents of international shipping lines implement an expeditious procedure in refunding the same within a non-extendible period of fifteen (15) days from the return of the container.
b) there are clear and fair standards for deductions made known by such forwarders or agents to the other party prior to engagement; and
c) there is actual proof that a container deposit has been paid before any deduction is made.

SEC. 10. *Role of Government Agencies*. – To effectively implement and carry out the objectives of this Act the following agencies shall exercise and enforce the following functions in addition to their existing mandates:

a) Department of Transportation – The DOTr shall facilitate the expansion of port system capacity of port authorities and the expansion of the Philippine freight transport system to facilitate the movement of containers to and from the ports.

b) Maritime Industry Authority – The MARINA shall ensure competitive and efficient international maritime transportation services for the shipping public by:

1. Reviewing and monitoring agreements among international shipping lines and port operators serving Philippine ports to ensure that they do not cause substantial increases in transportation costs or reduction in transportation services. In applicable cases, the MARINA may endorse any agreement that it finds anticompetitive to the Philippine Competition Commission for appropriate action;

2. Investigating, hearing and adjudicating complaints regarding the imposition of rates and charges, and practices of international shipping lines, NVOCCs, and other logistics service providers that impede efficient commerce;

3. Imposing fines and charges in the exercise of its adjudicatory functions;
4. Ensuring that the international shipping lines' tariff rates and charges are published, and automated tariff systems are electronically available;

5. Accrediting sea freight forwarders such as NVOCC, international freight forwarders and other similar maritime enterprises; and

6. Exercising supervision over sea freight forwarders, domestic freight forwarders, and other similar maritime enterprises including the ship agents and their representatives, branches, offices or subsidiaries of international shipping lines to ensure the reasonableness of their rate-setting mechanism for local fees and charges, and compliance with existing laws, rules and regulations relating to standards of safety, quality and efficiency of operation.

c) Department of Trade and Industry – The DTI shall:

1. In coordination with the DOTr, the National Economic and Development Authority (NEDA), the DPWH, the MARINA, and the PPA, develop a long-term National Logistics Strategy that will establish an integrated transport and logistics sector that shall facilitate the efficient and timely movement of goods. The National Logistics Strategy shall include the identification of international gateway and secondary airports and seaports, development of new Roll On – Roll Off (RORO) ports and facilities, rail development, warehousing improvement, and connectivity enhancement;

2. Ensure efficiency and competitiveness of the logistics services sector;

3. Coordinate with other agencies to ensure the efficient movement of goods and empty containers and lower logistics cost;

4. Encourage investment in the logistics services sector particularly in trucking service, freight forwarders, container yards and depot, dry and cold warehouses, and last mile logistics; and

5. Monitor matters relating to transparency of local charges to implement to the full extent existing consumer trade laws to curb unconscionable business practices, excessive and unnecessary fees, charges and surcharges imposed as local charges by international shipping lines, their agents or forwarders.

d) Philippine Ports Authority and other port authorities – The PPA and other port authorities shall:

1. In case of urgent need, ensure as far as practicable that international shipping lines are given ample berthing space to facilitate the safe loading and unloading of empty containers in coordination with the port or terminal operator;

2. Hasten the provision of the necessary infrastructure facilities by expanding the capacity of government-owned ports with existing contracts for handling of foreign vessels and foreign cargoes and facilitate the building of additional ports by the private sector;

3. Oversee the strict enforcement of the regulations on overstaying foreign containers, whether laden or empty. For this purpose, the PPA and other port authorities shall review the effectiveness of current storage charges imposed on overstaying containers to improve port efficiency and prevent congestion;

4. Determine the existence of port congestion. Towards this end, the PPA shall, within ninety (90) days from the effectivity of this Act, formulate and issue a Port Congestion Contingency Plan, in consultation with the Board. The Port Congestion Contingency Plan shall be implemented by the relevant agencies upon the declaration of an imminent port congestion;

5. Promulgate rules and regulations to maximize the use and further development of the Ports of Batangas, Subic and other ports and terminals deemed appropriate as alternates to the Port of Manila (POM) and the Manila International Container Port (MICP). Further, the PPA and Subic Bay Metropolitan Authority (SBMA) shall facilitate the expansion of the Ports of Batangas and Subic to accommodate shipments originally bound for POM and MICP and the development of other inland container depots (ICDs);

6. Require all international port operators to maintain an online portal accessible to the DTI, BOC, DOTr, MARINA, PPA, and other port authorities that will provide information regarding daily summary of cargo throughput (volume and value), port dwell time of ships, dwell time of cargoes (containerized and non-containerized), average vessel waiting time at anchorage, and container yard utilization to facilitate the monitoring of port utilization; and

7. Implement the Port Development Master Plan to support economic growth.

e) Bureau of Customs – The BOC shall:

1. Expedite the accreditation and activation of ICDs;

2. Establish and manage a centralized database to facilitate a real-time inventory and monitor the movement of containers;

3. Promulgate rules and regulations for the container yard utilization of ICDs;

4. Together with MARINA, establish a one-stop shop or satellite office inside the customs premises, housing all representatives of international shipping lines, their forwarders and agents, for easier coordination in the implementation of this Act;

5. In coordination with the PPA, Cebu Ports Authority, SBMA, PHIVIDEC Industrial Authority, Cagayan Economic Zone Authority, Regional Ports Management Authority, Bases Conversion Development Authority, Authority of the Freeport Bataan and other port authorities, promulgate, review and revise the guidelines, regulations and standards on such matters as:

    i. Ensuring the availability of inland container depot space for their empty containers;
    ii. Coordination with operators of designated container yards and inland container depots with sufficient capacity to accommodate the volume of containers per shipment;
    iii. Disposition of seized and abandoned cargoes to facilitate the decongestion of port terminals; and
    iv. Ensuring the swift processing of laden containers and loading of empty containers from the port to avoid congestion.

f) Philippine Competition Commission – The PCC shall:

1. *Motu proprio* or upon a verified complaint of any interested party, investigate cases involving violations of competition laws and regulations in relation to maritime trade;

2. Review and take necessary actions on findings of anti-competitive behavior that are endorsed to the Commission by the MARINA; and

3. Coordinate with MARINA and DTI in the implementation of competition policies in the maritime sector.

SEC. 11. *Additional Members of the MARINA Board*. – To effectively implement the objectives of this Act, the following shall be made members of the Board in addition to its existing membership:

a) Secretary of Foreign Affairs;
b) Secretary of Agriculture;
c) Secretary of Public Works and Highways;
d) Secretary of NEDA;
e) Commissioner of Customs;
f) Chairperson of the PCC;
g) Chairperson of the Land Transportation Franchising and Regulatory Board; and
h) One representative from each of the following private sector groups who shall be appointed as voting members:
    1. Philippine Liner Shipping Association (PLSA)
    2. Association of International Shipping Lines (AISL)
    3. Philippine Chamber of Commerce and Industry (PCCI)
    4. Supply Chain Management Association of the Philippines
    5. Port Users Confederation

The private sector representatives for each of the private sector groups shall be nominated by their respective associations appointed by the President of the Philippines from the nominees submitted by the aforementioned entities or associations for a term of three (3) years, and may be reappointed only once.

Upon the expiration of their terms, the private sector members of the Board shall serve in a hold-over capacity until their successors shall have been qualified and appointed. Any vacancy in the Board pertaining to the representatives of the private sector shall be replaced by a person belonging to the same group represented by the member who left the position vacant. The successor, who shall act in a permanent capacity, shall only serve for the unexpired portion of the term vacated.

SEC. 12. *Additional Powers and Functions of the Board*. – In addition to its existing powers and functions, the Board shall:

a) Advise the MARINA on policies relating to the competitiveness, reliability, integrity, and fairness of the maritime freight delivery system;

b) Provide MARINA with information, insight, and expertise pertaining to conditions in the maritime freight delivery system;

c) Make recommendations to enhance the existing policies relating to maritime freight delivery system or to adopt additional policies;

d) Provide MARINA with the guidelines necessary in the determination of the basis and reasonableness of local charges being imposed by international shipping lines; and

e) Encourage relevant government agencies and affected local government units to take appropriate actions on matters and issues affecting Philippine trade and transport logistics

SEC. 13. *National Logistics Efficiency Policy*. – The Board shall formulate a National Logistics Efficiency Policy (NLEP) to ensure the efficiency of customs and border management, quality of trade and transport infrastructure, competence of logistics services, their ability to track and trace consignments, and the competitiveness of shipping prices. The NLEP shall serve as a guide in the formulation and issuance of the rules, regulations, and programs of the implementing agencies specified in this Act.

The policy shall institutionalize the use of information technology to enhance connectivity among relevant government agencies to facilitate efficient business transaction consistent with the objectives of Republic Act No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act.

SEC. 14. *Prohibited Acts.* – It shall be unlawful for any international carrier or its agent, port or terminal operator, NVOCC, or logistics service provider to perform the following acts:

a) Operate under an agreement that has been suspended by virtue an order of a proper authority, or a temporary restraining order or rendered ineffective by injunction issued by the court;

b) Charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges provided in the service contract or those published and filed with the MARINA;

c) Engage in any anti-competitive practice prohibited under Republic Act No. 10667 or the Philippine Competition Act.

SEC. 15. *Penalties*. – The violation of the provisions of this Act or its guidelines shall be sanctioned by the penalties as may be determined by the MARINA such as fines, cancellation of the accreditation, or the blacklisting of any forwarder, agent or international shipping line, or both.

In fixing the amount of fines, the MARINA shall take into consideration the gravity of the violation, based on a criteria to be prescribed in the rules and regulations to be issued to implement this Act.

The imposition of penalties and other sanctions under this Act shall not preclude any aggrieved party or government agency from filing a criminal, civil or administrative case for violation of existing laws, rules and regulations by reason of the same act or omission.

SEC. 16. *Education Campaign*. – The MARINA and the DTI shall, in coordination with private stakeholders, develop a program to educate all Philippine shippers and consignees on how to negotiate using the INCOTERMS, the freight, and other shipping charges imposed by forwarders and agents of international shipping lines, the best practices to manage or control the supply chain and updates in the implementation of this Act.

SEC. 17. *Submission of Annual Report*. – The Board shall, not later than the first quarter of the succeeding year, submit to the President of the Philippines and both Houses of Congress an annual report containing the summary of all transactions pertaining to international shipping operations as well as the issues and concerns of the industry and recommend, if necessary, measures that require legislative action.

SEC. 18. *Implementing Rules and Regulations*. – The Board shall, within sixty (60) working days from the effectivity of this Act, issue such rules and regulations as may be necessary to implement the provisions of this Act.

SEC. 19. *Suppletory Application of Related Laws*. – The applicable provisions of Presidential Decree No. 474, Executive Order Nos. 125 and 125-A, s. 1987, Republic Act No. 7394 or the Consumer Act of the Philippines, Republic Act No. 10863 or the Customs Modernization and Tariff Act, Republic Act No. 10667 or the Philippine Competition Act and all other related laws, rules and regulations, insofar as they are not inconsistent, shall supplement in the implementation of the provisions of this Act.

SEC. 20. *Separability Clause*. – If any provision of this Act is declared invalid or unconstitutional, such parts not affected by such declaration shall remain in full force and effect.

SEC. 21. *Repealing Clause*. – All laws, orders, rules and regulations and other issuances, or parts thereof, which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 22. *Effectivity*. – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,