

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

TWENTIETH (20th) CONGRESS
FIRST REGULAR SESSION

House Bill No. **1338**



Introduced by Rep. ROBERT NAZAL

**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**

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 which undermines 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.

Through this Act, 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, the passage of the bill is earnestly sought.


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*Be enacted by Senate and the 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 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 costs. It is, nonetheless, cognizant of the desire to maintain a balance between regulation and investment and ensure that transport and logistics providers are not unreasonably overregulated and 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;
- c) Ensure proper government oversight on the imposition of domestic charges and related business practices by international shipping lines;
- d) Empower government institutions in their roles of promoting an efficient, competitive, and reliable logistics performance; and
- e) 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 place with sufficient depth of water where vessels anchor within the harbor;
- b) *Bill of Lading (B/L)* refers to a transport document issued by shipping lines, carriers and international freight forwarders or non-vessel operating common carrier for water-borne freight. The holder or consignee of the bill has the right to claim delivery of the goods at the port of destination. It is a contract of carriage that includes carrier conditions, such as limits of liability and claims procedures. In addition, it contains transport instructions to shipping lines and carriers, a description of the goods, and applicable transportation charges;
- 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 or container yard;
- f) *Container Yard (CY)* 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/Professional Identification Card issued by the Professional Regulatory Board and Professional Regulation Commission pursuant to Republic Act No. 9280, as amended, otherwise known as the "Customs Brokers Act of 2004, as further amended by RA 9853;"
- i) *Delivery Order* refers to a document issued by the shipping line releasing the cargo to the consignee mentioned in the BL upon payment of all handling charges;
- j) *Demurrage Fee* refers to the charge that the merchant pays for the use of the container within the terminal beyond the agreed free time period;
- k) *Detention Charges* refer to the charge that the merchant pays for the use of the container outside the terminal or depot, beyond the agreed free time period;
- l) *Dwell Time* refers to the number of hours spent by a vessel from waiting time to berth 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/crating, trucking and warehousing, engaging as an agent/representative of a foreign non-vessel operating as a common carrier/cargo consolidator named in a master bill of lading (BL) as consignee of a consolidated shipment, and other related undertakings;

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

o) *International Commercial Terms (INCOTERMS)* refers to a set of internationally-recognized rules which define the responsibilities of sellers and buyers. It specifies 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 between foreign and Philippine ports;

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 any third-party logistics providers who are outsourced to manage a company's warehousing, distribution and transportation of freight;

s) *Merchant* refers to the shipper or consignee of the goods;

t) *Non-Containerized Cargo* - Goods shipped in pieces separately without the use of a container that includes goods that are shipped in crates, bags, boxes, drums, barrels and which come in extremely large in sizes or dimensions;

u) *Non-Vessel Operating Common Carrier (NVOCC)* refers to an entity, without owning or operating a vessel, that provides a point-to-point service which may include several modes of transport of Full Container Load (FCL) and/or undertakes groupage of Less than Container Load (LCL) shipments and issuing its own BL and assuming responsibilities for the shipments;

v) *Port Congestion* refers to a situation at the port that effectively stalls the movement of cargoes leading to adverse economic consequences;

w) *Port/Terminal Operator* refers to an entity that owns or leases port terminals and is involved in managing the movement of cargo containers between cargo ships, trucks and freight trains and optimizing the flow of goods through customs to minimize

the amount of time a ship spends in port. A port/terminal operator may be a public or private entity; and

x) *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.

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 international carriers, NVOCCs and forwarders shall file all their regular shipping charges and fees with the MARINA and publish the same in a newspaper of general circulation: *Provided*, That the publication requirement is deemed complied with through 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 or consignee may become effective earlier than thirty (30) days after filing with the MARINA, 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 or consignee 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, shall be charged by international shipping lines or their agents, freight forwarders and NVOCCs to consignees and shippers. The imposition of 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 thirty (30) days after the promulgation of the implementing rules and regulations (IRR) of this Act, all existing agreements: 1) between and among international carriers operating in Philippine ports; 2) agreements among Philippine port operators; and 3) among one or more Philippine port operators and one or more international carriers operating in Philippine ports that affects Philippine maritime trade, shall be filed with the MARINA.

Any agreement or any amendment thereto shall become effective thirty (30) days after filing: *Provided*, That, during the effectivity of such agreement, if MARINA determines that the same is likely to produce an unreasonable reduction in transportation services or an unreasonable increase in transportation cost, it shall refer the same to the Philippine Competition Commission (PCC) which shall act on it within thirty (30) days from receipt thereof.

SEC. 8. *Detention Charges and Demurrage Fees.* – Detention charges may only be imposed on delayed return of empty containers beyond the agreed period.

No detention charges in the return of empty containers shall be imposed by shipping lines when the cause of delay is on the part of the shipping lines. 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 as well as the timeframe for the return.

The refusal of the depot nominated by the international shipping lines in the delivery order to accept an empty container that is returned within the agreed period constitutes a waiver of imposition of detention charges. Any claims for additional charges or damages, such as but not limited to trucking charges, by reason of delayed acceptance of the depot nominated by the international shipping lines shall be borne by the latter.

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

SEC. 9. *Container Deposits.* – 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) calendar days from the return of the container without need for demand;
- 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 given 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 capacity in the port system of the port authorities and the expansion of the Philippine freight transport system as an additional avenue for moving containers to and from the ports.

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

- 1. Fixing and determining the fair and reasonable rates, fees, charges or other similar costs, other than freight, that are imposed by international logistics service providers

- 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 in private, automated tariff systems and 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 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 to 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/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;
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; and
6. Act as a central depository of data, referred to as the logistics observatory, by collecting, analyzing, and disseminating data, in accordance with the provision of Republic Act No. 10173 or the “Data Privacy Act of 2012,” on the logistics sector to support policy-making, improve transparency, and enhance the overall efficiency and effectiveness of the logistics sector.

d) Philippine Ports Authority (PPA) 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 be given ample berthing space to ship out the empty containers in coordination with the port or terminal operator;
2. Hasten and put to full use the needed infrastructure facilities by expanding capacity of existing 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. Review the effectiveness of current penalties/storage charges imposed on overstaying containers at the port to improve port efficiency and prevent congestion;

4. Determine the existence of port congestion. Towards this end, the PPA shall, within thirty (30) days from the issuance of the implementing rules and regulations of this Act, formulate and issue a Port Congestion Contingency Plan, in consultation with the MARINA Board (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 port of Batangas, Subic and other ports and terminals deemed appropriate as alternates to the Port of Manila (POM) and Manila International Container Port (MICP). Further, PPA and SBMA shall facilitate the expansion of the Port 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 (laden and empties, 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 Port Development Master Plan to support the economic growth.

e) Bureau of Customs – The BOC shall:

1. Expedite the accreditation and activation of ICDs;

2. Establish and manage a centralized database for real-time inventory and monitoring of containers and their movement;

3. Promulgate rules and regulations for the 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 Philippine Ports Authority (PPA), Cebu Ports Authority (CPA), Subic Bay Metropolitan Authority (SBMA), PHIVIDECA Industrial Authority (PIA), Cagayan Economic Zone Authority (CEZA), Regional Ports Management Authority (RPMA), Bases Conversion Development Authority (BCDA), Authority of the Freeport

Bataan (AFAB) and other Port Authorities, promulgate, review and revise the guidelines, regulations and standards on matters such as:

- i. Ensuring 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;
- iv. Ensuring the swift processing of laden containers and loading of empty containers from the port to avoid congestion.

f) Philippine Competition Commission (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 matters found by MARINA and DTI as anti-competitive and endorsed to the Commission;
3. Coordinate with MARINA and DTI in the implementation of competition policies in the maritime sector; and
4. Coordinate with the Department of Justice-Office for Competition (DOJ-OFC) in the prosecution of offenses in violation of this Act, following its inquiries or in cases referred to it by the MARINA, DTI or other concerned agencies.

SEC. 11. *Participation of Private Stakeholders and Other Government Agencies in Policy Formulation.* – To effectively implement the objectives of this Act, the following shall be considered as additional members of the Board on matters pertaining to charges and fees imposed on international maritime trade and who shall have the right to vote on the formulation of policies related thereto:

- a) The Secretary of Agriculture;
- b) The Secretary of Public Works and Highways;
- c) The Secretary of NEDA;
- d) The Commissioner of Customs;
- e) The Chairperson of PCC;

f) The Chairperson of the Land Transportation Franchising and Regulatory Board;
and

g) One representative from each of the following sectors:

1. Philippine-Registered Confederation/Association of Importer and Exporters;

2. Philippine-Registered Confederation/Association of Supply Chain and Logistics, including Freight Forwarders; and

3. Registered Confederation/Association or International Shipping Lines

The private sector representatives shall be elected by the members of the sector that they represent and shall serve for a term of three (3) years, and may be reappointed only once. The manner of election and system of determining sector affiliation shall be prescribed by the Board in the implementing rules and regulations of this Act.

Upon the expiration of their terms, the private sector members of the Board shall serve in a hold-over capacity until the successors shall have been elected. 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 unless reelected.

SEC. 12. *Additional Powers and Functions of the Board.* – In addition to its existing powers functions, the Board, to carry out the objectives of this Act, 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;

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

f) Approve policies formulated by marina pertaining to the maritime freight delivery system, ensuring alignment with the objectives of this act and fostering competitiveness, reliability, and fairness in the system; and

g) Submit reports to the DOTr on the implementation of this Act, including the complaints received and the results or decisions of the investigations and hearings conducted by the agency.

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, ability to track and trace consignments, and competitively priced shipments. 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 include as main component the use of information technology to enhance connectivity among relevant government agencies to facilitate efficient business transaction consistent with the provisions of Republic Act No. 11032 or 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 or port 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 other 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 within the scope of the Republic Act No. 10667 or the Philippine Competition Act.

SEC. 15. *Penalties.* – The violation of the provisions, rules or regulations in this Act or its guidelines shall be sanctioned by necessary 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 the fines and penalties, MARINA shall take into consideration the gravity of the violation, based on the criteria as may be provided in the implementing rules and regulations of this Act.

Subject to the approval of the Board, the MARINA, from time to time, shall adjust the fines and penalties based on the latest consumer price index as published by the Philippine Statistics Authority or update their current regulations to include such other penalties in order to effectively carry out the objectives of 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, in coordination with private stakeholders, shall 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. Appropriations. The Secretary of Transportation shall immediately include in the Department's program the operationalization of additional offices under the MARINA for the latter to effectively perform the additional functions given to it under this Act, the initial funding of which shall be charged against the current available budget of the DOTr or MARINA. Thereafter, such sum as may be necessary in the continued implementation of this Act shall be included in the annual General Appropriations Act.

SEC. 18. *Submission of Annual Report.* – The Board shall, not later than the first quarter of the succeeding year, submit to the President 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. 19. *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. 20. *Suppletory Application.* – The 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 applicable laws, rules and regulations, insofar as they are not inconsistent with the provisions of this Act, shall have suppletory application in cases not provided for under this Act.

SEC. 21. *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. 22. *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. 23. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,