

# **WORLD TRADE ORGANIZATION**

**G/SCM/N/1/PHL/2**  
26 September 2001

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**Committee on Subsidies  
and Countervailing Measures**

Original: English

## **NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 32.6 OF THE AGREEMENT**

### **PHILIPPINES**

The following communication, dated 12 September 2001, has been received from the Permanent Mission of the Philippines.

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Pursuant to Article 32.6 of the Agreement on Subsidies and Countervailing Measures, I have the honour to notify the Philippine legislation known as the Republic Act No. 8751, entitled "The Countervailing Act of 1999" and its Implementing Rules and Regulations embodied in Joint Administrative Order No. 02 (2000).

**REPUBLIC ACT NO. 8751**  
**The Countervailing Act of 1999**

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H.S. No. 7036  
S.No. 1330

**Republic of the Philippines**  
**Congress of the Philippines**  
**Metro Manila**

Eleventh Congress

Third Special Session

Begun and held in Metro Manila, on Monday, the twenty seventh day of  
July, nineteen hundred and ninety-nine

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AN ACT STRENGTHENING THE MECHANISMS FOR THE IMPOSITION OF  
COUNTERVAILING DUTIES ON IMPORTED SUBSIDIZED PRODUCTS, COMMODITIES OR  
ARTICLES OF COMMERCE IN ORDER TO PROTECT DOMESTIC INDUSTRIES FROM  
UNFAIR TRADE COMPETITION, AMENDING FOR THE PURPOSE SECTION 302, PART 2,  
TITLE II, BOOK I OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE  
TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED

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

SECTION 1. Section 302, Part 2, Title II, Book 1 of Presidential Decree No. 1464, otherwise  
known as the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to  
read as follows:

"SEC. 302. Countervailing Duty. -

"Whenever any product, commodity or article of commerce is granted directly or  
indirectly by the government in the country of origin or exportation, any kind or form  
of specific subsidy upon the production, manufacture or exportation of such product,  
commodity or article, and the importation of such subsidized product, commodity or  
article has caused or threatens to cause material injury to a domestic industry or has  
materially retarded the growth or prevents the establishment of a domestic industry as  
determined by the Tariff Commission (hereinafter referred to as the 'Commission'),  
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 simply referred to as 'the  
Secretary', as the case may be) shall issue a department order imposing a  
countervailing duty equal to the ascertained amount of the subsidy. The same levy  
shall be imposed on the like product, commodity or article thereafter imported to the  
Philippines under similar circumstances. The countervailing duty shall be in addition  
to any ordinary duties, taxes and charges imposed by law on such imported product,  
commodity or article.

"(A) Initiation of Action. - A countervailing action may be initiated by the following:

- "(1) Any person, whether natural or juridical, who has an interest to protect, by filing a verified petition for the imposition of a countervailing duty by or on behalf of the domestic industry;
- "(2) The Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, in special circumstances where there is sufficient evidence of an existence of a subsidy, injury and causal link.

"(B) Requirements. - A petition shall be filed with the Secretary and shall be accompanied by documents, if any, which are reasonably available to the petitioner and which contain information supporting the facts that are essential to establish the presence of the elements for the imposition of a countervailing duty, and shall further state, among others:

- "(1) The domestic industry to which the petitioner belongs and the particular domestic product, commodity or article or class of domestic product, commodity or article being prejudiced;
- "(2) The number of persons employed, the total capital invested, the production and sales volume, and the aggregate production capacity of the domestic industry that has been materially injured or is threatened to be materially injured or whose growth or establishment has been materially retarded or prevented;
- "(3) The name and address of the known importer, exporter, or foreign producer, the country of origin or export, the estimated aggregate or cumulative quantity, the port and the date of arrival, the import entry declaration of the imported product, commodity or article, as well as the nature, the extent and the estimated amount of the subsidy thereon; and
- "(4) Such other particulars, facts or allegations as are necessary to justify the imposition of countervailing duty on the imported product, commodity or article.

"A petition for the imposition of a countervailing duty shall be considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than fifty per cent (50%) of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, an investigation shall be initiated only when domestic producers supporting the application account for at least twenty-five per cent (25%) of the total production of the like product produced by the domestic industry. In cases involving an exceptionally large number of producers, degree of support or opposition may be determined by using statistically valid sampling techniques or by consulting their representative organizations.

"Within ten (10) days from his receipt of the petition or information, the Secretary shall review the accuracy and adequacy of the information or evidence provided in the petition to determine whether there is sufficient basis to justify the initiation of an

investigation. If there is no sufficient basis to justify the initiation of an investigation, the Secretary shall dismiss the petition and shall properly notify the Secretary of Finance, the Commissioner of Customs and other parties concerned regarding such dismissal. The Secretary shall extend legal, technical and other assistance to the concerned domestic producers and their organizations at all stages of the countervailing action.

"(C) Notice to the Secretary of Finance. - Upon his receipt of the petition, the Secretary shall, without delay, furnish the Secretary of Finance with a summary of the essential facts of the petition, and request the latter to immediately inform the Commissioner of Customs regarding such petition and to instruct him to gather and secure all import entries covering such allegedly subsidized product, commodity or article without liquidation. The Commissioner of Customs shall submit to the Secretary a complete report on the number, volume, and value of the importation of the allegedly subsidized product, commodity or article within ten (10) days from his receipt of the instruction from the Secretary of Finance, and to make similar additional reports every ten (10) days thereafter.

"(D) Notice to and Answer of Interested Parties. - Within five (5) days from finding of the basis to initiate an investigation, the Secretary shall notify all interested parties, and shall furnish them with a copy of the petition and its annexes, if any. The interested parties shall, not later than thirty (30) days from their receipt of the notice, submit their answer, including such relevant evidence or information as is reasonably available to them to controvert the allegations of the petition. If they fail to submit their answer, the Secretary shall make such preliminary determination of the case on the basis of the facts and/or information available.

"The Secretary shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the petition. However, after receipt of a properly documented petition and before proceeding to initiate an investigation, he shall notify the government of the exporting country about the impending investigation.

"(E) Preliminary Determination. - Within twenty (20) days from his receipt of the answer of the interested parties, the Secretary shall, on the basis of the petition of the aggrieved party and the answer of such interested parties and their respective supporting documents or information, make a preliminary determination on whether or not a prima facie case exists for the imposition of a provisional countervailing duty in the form of a cash bond equal to the provisionally estimated amount of subsidy. Upon finding of a prima facie case, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs to collect the cash bond, in addition to the corresponding ordinary duties, taxes and other charges imposed by law on such product, commodity or article. The posting of a cash bond shall be required not earlier than sixty (60) days from the date of initiation of the investigation. The cash bond shall be deposited with a government depository bank and shall be held in trust for the respondent importer. The application of the cash bond shall not exceed four (4) months.

"The Secretary shall immediately transmit his preliminary findings together with the records of the case to the Commission for its formal investigation.

"(F) Termination of Investigation by the Secretary or the Commission. - The Secretary or the Commission as the case may be, shall *motu proprio* terminate the investigation at any stage of the proceedings if the amount of subsidy is *de minimis* as

defined in existing international trade agreements of which the Republic of the Philippines is a party; or where the volume of the subsidized imported product, commodity or article, actual or potential, or the injury is negligible.

"(G) Formal Investigation by the Commission. - Immediately upon its receipt of the records of the case from the Secretary, the Commission shall commence the formal investigation and shall accordingly notify in writing all interested parties and, in addition, give public notice of such investigation in two (2) newspapers of general circulation.

"In the formal investigation, the Commission shall essentially determine:

- "(1) The nature and amount of the specific subsidy being enjoyed by the imported product, commodity or article in question;
- "(2) The presence and extent of the material injury or the threat thereof to, or the material retardation of the growth, or the prevention of the establishment of, the affected domestic industry; and
- "(3) The existence of a causal relationship between the allegedly subsidized imported product, commodity or article and the material injury or threat thereof to, or the material retardation of the growth, or the prevention of the establishment of, the affected domestic industry.

"The Commission is hereby authorized to require any interested party to allow it access to, or otherwise provide, necessary information to enable the Commission to expedite the investigation. In case any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period of time or significantly impedes the investigation, a final determination shall be made on the basis of the facts available.

"The formal investigation shall be conducted in a summary manner. No dilatory tactics nor unnecessary or unjustified delays shall be allowed, and the technical rules of evidence shall not be applied strictly.

"(H) Determination of the Existence of Subsidy. - A subsidy is deemed to exist:

- "(1) When the government or any public body in the country or origin or export of the imported product, commodity or article extends financial contribution to the producer, manufacturer or exporter of such product, commodity or article in the form of:
  - "(a) Direct transfer of funds such as grants, loans or equity infusion; or
  - "(b) Potential direct transfer of funds or assumption of liabilities such as loan guarantees; or
  - "(c) Foregone or uncollected government revenue that is otherwise due from the producer, manufacturer or exporter of the product, commodity or article: Provided, That the exemption of any exported product, commodity or article from duty or tax imposed on

like products, commodity or article when destined for consumption in the country of origin and/ or export or the refunding of such duty or tax, shall not be deemed to constitute a grant of a subsidy: Provided, further, That should a product, commodity or article be allowed drawback by the country of origin or export, only the ascertained or estimated amount by which the total amount of duties and/or internal revenue taxes was discounted or reduced, if any, shall constitute a subsidy; or

"(d) Provision of goods or services other than general infrastructure; or

"(e) Purchases of goods from the producer, manufacturer or exporter; or

"(f) Payments to a funding mechanism; or

"(g) Other financial contributions to a private body to carry out one or more of the activities mentioned in subparagraphs (a) to (f) above; or

"(h) Direct or indirect income or price support; and

"(2) When there is a benefit conferred.

"(I) Determination of Specific Subsidy. - In the determination of whether or not a subsidy is specific, the following principles shall apply:

"(1) Where the government or any public body in the country of origin or export of the imported product, commodity or article explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

"(2) Where such government or public body through a law or regulation establishes objective criteria and conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist: Provided, That the eligibility is automatic and that such criteria or conditions are strictly adhered to. Objective criteria shall mean those which are neutral, do not favour certain enterprises over others, and are economic in nature and horizontal in application, such as number of employees or size of enterprise;

"(3) In case a subsidy appears to be non-specific according to subparagraphs (1) and (2) above, but there are reasons to believe that the subsidy may in fact be specific, factors that may be considered are: use of a subsidy programme by a limited number of certain enterprises for a relatively longer period; granting of disproportionately large amounts of subsidy to certain enterprises; and exercise of wide and unwarranted discretion for granting a subsidy; and

- "(4) A subsidy which is limited to certain enterprises located within a designated geographical region within the territory of the government or public body in the country of origin or export shall be specific.

"(J) Determination of Injury. - The presence and extent of material injury or threat thereof to a domestic industry, or the material retardation of the growth, or the prevention of the establishment of a nascent enterprise because of the subsidized imports, shall be determined by the Secretary or the Commission, as the case may be, on the basis of positive evidence and shall require an objective examination of:

- "(1) The volume of the subsidized imports, that is, whether there has been a significant increase either absolute or relative to production or consumption in the domestic market;
- "(2) The effect of the subsidized imports on prices in the domestic market for the like product, commodity or article, that is, whether there has been a significant price undercutting, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred to a significant degree;
- "(3) The effect of the subsidized imports on the domestic producers of the like product, commodity or article, including an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry concerned, such as, but not limited to, actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual or potential negative effects on the cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on the support programmes of the national government; and
- "(4) Factors other than the subsidized imports which at the same time are injuring the domestic industry, such as volumes and prices of non-subsidized imports of the product, commodity or article in question; contraction in demand or changes in the patterns of consumption; trade restrictive practices of and competition between the foreign and domestic producers; developments in technology and the export performance and productivity of the domestic industry.

"In determining threat of material injury, the Secretary or the Commission, as the case may be, shall decide on the basis of facts and not merely allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidized imports would cause injury should be clearly foreseen and imminent considering such relevant factors as:

- "(1) Nature of the subsidy in question and the trade effects likely to arise therefrom;
- "(2) Significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importations;

- "(3) Sufficient freely disposable, or an imminent substantial increase in, capacity of the exporter of such subsidized imported product, commodity or article indicating the likelihood of substantially increased subsidized imports to the domestic market, taking into account the availability of other markets to absorb the additional exports;
- "(4) Whether these subsidized imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and will likely increase demand for further imports; and
- "(5) Inventories of the product, commodity, or article being investigated.

"In the case where the effect of the subsidized import will materially retard the growth or prevent the establishment of a domestic industry, information on employment, capital investment, production and sales, and production capacity of said domestic industry can be augmented or substituted by showing through a factual study, report or other data that an industry which has potential to grow domestically is adversely affected by the subsidized import. For this purpose, the Department of Trade and Industry for non-agricultural products, and the Department of Agriculture for agricultural products, shall conduct continuing studies to identify and determine the specific industries, whether locally existing or not, which have the potential to grow or to be established domestically and whose growth or establishment will be retarded or prevented by a subsidized import.

"(K) Cumulation of Imports. - When imports of products, commodities or articles from more than one (1) country are simultaneously the subject of an investigation for the imposition of a countervailing duty, the Secretary or the Commission, as the case may be, may cumulatively assess the effects of such imports only if:

- "(1) The amount of subsidization established in relation to the imports from each country is more than *de minimis* as defined in existing international trade agreements of which the Republic of the Philippines is a party; and
- "(2) The volume of such imports from each country is not negligible; and
- "(3) A cumulative assessment of the effects of such imports is warranted in the light of the conditions of competition between the imported products, commodities or articles, and the conditions of competition between the imported products, commodities or articles and the like domestic products, commodities or articles.

"(L) Public Notices and Consultation Proceedings.- The Secretary or the Commission, as the case may be, shall make public notices and conduct consultation with the government of the exporting country when:

- "(1) Initiating an investigation;
- "(2) Concluding or suspending an investigation;
- "(3) Making a preliminary or final determination;



"(4) Making a decision to accept an undertaking or the termination of an undertaking; and

"(5) Terminating a definitive countervailing duty.

"(M) Voluntary Undertaking. - When there is an offer from any exporter of subsidized imports to revise its price, or where the government of the exporting country agrees to eliminate or limit the subsidy or take other measures to that effect, the Commission shall determine if the offer is acceptable and make the necessary recommendation to the Secretary. If the undertaking is accepted, the Secretary may advise the Commission to terminate, suspend or continue the investigation. The Secretary may also advise the Commission to continue its investigation upon the request of the government of the exporting country. The voluntary undertaking shall lapse if there is a negative finding of the presence of a subsidy or material injury. In the event of a positive finding of subsidization and material injury, the undertaking will continue, consistent with its terms and the provisions of this section.

"(N) Final Determination and Submission of Report by the Commission. - The Commission shall complete the formal investigation and submit a report of its findings to the Secretary within one hundred twenty (120) days from receipt of the records of the case: Provided, however, That it shall, before a final determination is made, inform all the interested parties of the essential facts under consideration which form the basis for the decision to impose a countervailing duty. Such disclosure should take place in sufficient time for the parties to defend their interests.

"(O) Imposition of Countervailing Duty. - The Secretary shall, within ten (10) days from receipt of an affirmative final determination by the Commission, issue a department order imposing the countervailing duty on the subsidized imported product, commodity or article. He shall furnish the Secretary of Finance with the copy of the order and request the latter to direct the Commissioner of Customs to cause the countervailing duty to be levied, collected and paid, in addition to any other duties, taxes and charges imposed by law on such product, commodity or article.

"In case of an affirmative final determination by the Commission, the cash bond shall be applied to the countervailing duty assessed. If the cash bond is in excess of the countervailing duty assessed, the remainder shall be returned to the importer immediately: Provided, That no interest shall be payable by the government on the amount to be returned. If the cash bond is less than the countervailing duty assessed, the difference shall not be collected.

"If the order of the Secretary is unfavourable to the petitioner, the Secretary shall, after the lapse of the period for appeal to the Court of Tax Appeals, issue through the Secretary of Finance a department order for the immediate release of the cash bond to the importer.

"(P) Duration and Review of Countervailing Duty. - As a general rule, any imposition of countervailing duty shall remain in force only as long as and to the extent necessary to counteract a subsidization which is causing or threatening to cause material injury. However, the need for the continued imposition of the countervailing duty may be reviewed by the Commission when warranted, *motu proprio* or upon direction of the Secretary.

"Any interested party may also petition the Secretary for a review of the continued imposition of the countervailing duty: Provided, That at least six (6) months have elapsed since the imposition of the countervailing duty, and upon submission of positive information substantiating the need for a review. Interested parties may request the Secretary to examine: (1) whether the continued imposition of the countervailing duty is necessary to offset the subsidization; and/or (2) whether the injury will likely continue or recur if the countervailing duty is removed or modified.

"If the Commission determines that the countervailing duty is no longer necessary or warranted, the Secretary shall, upon its recommendation, immediately issue a department order terminating the imposition of the countervailing duty and shall notify all parties concerned, including the Commissioner of Customs through the Secretary of Finance, of such termination.

"Notwithstanding the provisions of the preceding paragraphs of this subsection, any countervailing duty shall be terminated on a date not later than five (5) years from the date of its imposition (or from the date of the most recent review if that review has covered both subsidization and material injury), unless the Commission has determined, in a review initiated at least six (6) months prior to the termination date upon the direction of the Secretary or upon a duly substantiated request by or on behalf of the domestic industry, that the termination of the countervailing duty will likely lead to the continuation or recurrence of the subsidization and material injury.

"The procedure and evidence governing the disposition of the petition for the imposition of countervailing duty shall equally apply to any review carried out under this subsection. Such review shall be carried out expeditiously and shall be concluded not later than ninety (90) days from the date of the initiation of such a review.

"(Q) Judicial Review. - Any interested party who is adversely affected by the department order of the Secretary on the imposition of the countervailing duty may file with the Court of Tax Appeals a petition for review of such order within thirty (30) days from his receipt of notice thereof: Provided, however, That the filing of such petition for review shall not in any way stop, suspend or otherwise toll the imposition and collection of the countervailing duty on the imported product, commodity or article.

"The petition for review shall comply with the same requirements, follow the same rules of procedure, and be subject to the same disposition as in appeals in connection with adverse rulings on tax matters to the Court of Tax Appeals.

"(R) Definition of Terms. - For purposes of this subsection, the term:

"(1) 'Domestic Industry' shall refer to the domestic producers as a whole of the like product, commodity or article or to those of them whose collective output of the product, commodity or article constitutes a major proportion of the total domestic production of those products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term 'domestic industry' may be interpreted as referring to the rest of the producers. In case the market in the Philippines is divided into two or more competitive markets, the term 'domestic industry' shall refer to the producers

within each market although their production does not constitute a significant portion of the total domestic industry: Provided, That there is a concentration of subsidized imports into such a separate market: and Provided, further, That the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

"(2) 'Interested parties' shall include:

"(a) An exporter or foreign producer or the importer of a product subject to investigation, or the government of the exporting country or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

"(b) A producer of the like product in the Philippines or a trade and business association a majority of the members of which produce the like product in the Philippines; and

"(c) Labour unions that are representative of the industry or coalitions of producers and/or labour unions,.

"(3) 'Like product' shall mean a product commodity or article which is identical, i.e., alike in all respects to the product, commodity or article or in the absence of such product, commodity or article, another product, commodity or article which, although not alike in all respects, has characteristics closely resembling those of the imported product, commodity or article under consideration.

"(S) An inter-agency committee composed of the Secretaries of Trade and Industry, Agriculture, and Finance, the Chairman of the Tariff Commission, and the Commissioner of Customs shall promulgate all rules and regulations necessary for the effective implementation of this section."

SEC. 2. Administrative Support.- Upon the effectivity of this Act, the Departments of Trade and Industry and Agriculture and the Tariff Commission shall ensure the efficient and effective implementation of the provisions of this Act by creating a special unit within each agency that will undertake the functions relative to the disposition of countervailing cases.

All countervailing duties collected shall be earmarked for the strengthening of the capability of the Departments of Trade and Industry and Agriculture and the Tariff Commission to undertake their responsibilities under this Act.

Additional funding shall come from fees and charges which the aforementioned government agencies are authorized to collect under this Act.

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 provision not affected by such declaration of invalidity shall remain in force and effect.

SEC. 4. Repealing Clause. - All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

SEC. 5. Effectivity Clause. - This Act shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

**JOINT ADMINISTRATIVE ORDER NO. 02**

**Series 2000**

**IMPLEMENTING RULES AND REGULATIONS GOVERNING THE  
IMPOSITION OF A COUNTERVAILING DUTY UNDER REPUBLIC ACT 8751 –  
THE COUNTERVAILING ACT OF 1999**

In view of the amendments to Section 302 of the Tariff and Customs Code of the Philippines brought about by passage of RA 8751, otherwise known as the COUNTERVAILING ACT OF 1999, and by authority of Subsection S thereof, the following rules and regulations are hereby prescribed for the compliance of all concerned:

**Section 1. *Scope*** - The provisions of this Implementing Rules and Regulations (IRR) shall apply to any product which is granted, directly or indirectly by the government in the country of export or origin, any kind or form of specific subsidy upon the exportation or manufacture of such product, and the importation of such subsidized product is causing or is threatening to cause material injury to a domestic industry, or is materially retarding the growth or preventing the establishment of a domestic industry.

The following shipments and/ or consignments shall not be subject to countervailing duty protest:

- (a) Articles imported by, or consigned to government agencies not organized for profit and particularly designated by law or proper authorities to import, directly or through awardees, such commodities as would stabilize and/ or supplement shortages.
- (b) Conditionally duty-free importations allowable under Section 105 of the Tariff and Customs Code as amended.

**Section 2. *Definition of Terms*** - For purposes of this IRR, the following definition of terms shall prevail:

- (a) "AGRICULTURAL PRODUCT " refers to a product classified under Chapters 1 to 24 of the Tariff and Customs Code of the Philippines, including those under the specific tariff lines listed in Annex A.
- (b) "CAUSAL LINK" refers to a finding that the material injury suffered by the domestic industry is the direct result of the importation of the subsidized product.
- (c) "COMMISSION" refers to the Tariff Commission.
- (d) "COUNTERVAILING DUTY" refers to a special duty levied for the purpose of offsetting any kind or form of specific subsidy bestowed directly or indirectly upon the exportation or manufacture of any product. The countervailing duty shall be in addition to any ordinary duties, taxes and charges imposed by law on such imported product.
- (e) "COUNTRY OF EXPORT" is the country where the allegedly subsidized product was shipped to the Philippines, regardless of the location of the seller. The country of export and the country of origin may be the same, but not in all instances.

- (f) "COUNTRY OF ORIGIN" is the country where the allegedly subsidized product either was wholly obtained or where the last substantial transformation took place. The country of origin and the country of export may be the same, but not in all instances. In the case of transshipment where a product is shipped from a third country that is not the country where the product was manufactured or processed, the country of origin will be different from the country of export.
- (g) "DOMESTIC INDUSTRY" refers to the domestic producers as a whole of the like product or to those of such producers whose collective output of the product constitutes a major proportion of the total domestic production of that product, except that when producers are related to the foreign exporters or importers or are themselves importers of the allegedly subsidized product, the term "domestic industry" may be interpreted as referring to the rest of the producers.

Producers shall be deemed to be related to foreign exporters or importers only if:

1. one of them directly or indirectly controls the other; or
2. both of them are directly or indirectly controlled by a third person; or
3. together they directly or indirectly control a third person, provided that there are grounds to believe or suspect that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

For this purpose, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

If available data does not permit the separate identification of the domestic production of the like product, the domestic production shall refer to the production of the narrowest group or range of products which includes the like product for which the necessary information is available.

- (h) "FOREIGN EXPORTER" refers to one whose name appears on documentation attesting to the export of the product to the Philippines regardless of the manufacturer's name in the invoice.
- (i) "INTERESTED PARTIES" refer to persons or entities which are directly affected by the investigation. They shall include (1) a domestic importer, a foreign exporter or producer of the product subject to investigation, or the government of the country of export or origin, or a trade or business association a majority of the members of which are importers, foreign exporters or producers of such product; (2) a producer of the like product in the Philippines or a trade and business association a majority of the members of which produce the like product in the Philippines; and (3) labour unions that are representative of the industry or coalitions of producers and/or labour unions.
- (j) "LIKE PRODUCT" refers to a product which is identical or alike in all respects to the allegedly subsidized product, or in the absence of the former, another product which, although not alike in all respects, has characteristics closely resembling those of the allegedly subsidized product.

- (k) "NON-ACTIONABLE SUBSIDIES" refers to subsidies protected from countervailing action either because they are considered to be of particular value and not to be discouraged or because they are considered to have no, or at most minimal, trade-distorting effects or production effects
- (l) "NON-AGRICULTURAL PRODUCT " refers to a product classified under Chapters 25 to 97 of the Tariff and Customs Code of the Philippines, excluding the products defined in Annex A.
- (m) "PRICE DEPRESSION" refers to the extent at which the domestic producer reduces its selling price in order to compete with the allegedly subsidized product.
- (n) "PRICE SUPPRESSION" refers to the extent by which the allegedly subsidized product prevents the domestic producer from increasing its selling price to a level that will allow full recovery of its cost of production.
- (o) "PRICE UNDERCUTTING" refers to the extent at which the allegedly subsidized product is consistently sold at a price below the domestic selling price of the like product.
- (p) "SECRETARY" refers to the Secretary of Trade and Industry in the case of non-agricultural product or the Secretary of Agriculture, in the case of agricultural product, or their duly designated representatives.
- (q) "SPECIFIC SUBSIDY" refers to the subsidy limited to an enterprise or industry or group of enterprises or industries. A subsidy can be limited to certain enterprises or industries by being available only in particular regions of a country. All export related subsidies and subsidies related to the use of domestic over imported goods are specific. Subsidies can also be specific if they are provided in practice to only certain enterprises or industries even though the law may not explicitly limit their application in such a manner.
- (r) "SUBSIDIZED IMPORT/PRODUCT" refers to any product which is granted, directly or indirectly by the government in the country of export or origin, any kind or form of specific subsidy upon the exportation or manufacture of such product, and which is causing or is threatening to cause material injury to a domestic industry, or is materially retarding the growth or preventing the establishment of a domestic industry producing the like product.
- (s) "SUBSIDY" refers to any specific assistance (e.g., financial contribution, income or price support schemes) provided directly or indirectly by the government of the country of export or origin in respect of the product imported into the Philippines, which confers a benefit to the foreign exporter or producer of said product. Examples of financial contributions are grants, soft loans, guarantees and certain equity infusions, tax credits and goods and services provided by governments. A subsidy can be an export subsidy, aimed at assisting exports, or it can be a domestic subsidy, which provides assistance irrespective of whether the product is exported or not.

### **Section 3. *Non-Actionable Subsidies***

- (a) The World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture creates general categories of subsidies which are non-actionable, i.e., which cannot be challenged multilaterally or be subject to countervailing action. Under these agreements, these subsidies are protected either

because they are considered to be of particular value and not to be discouraged or because they are considered to have no, or at most minimal, trade-distorting effects or production effects.

- (b) For the purposes of this IRR, the following categories of subsidies shall be non-actionable:
1. Assistance for research activities conducted by foreign firms or by higher education or research establishments on a contract basis with such foreign firms if the assistance covers<sup>1</sup> not more than seventy-five per cent (75%) of the costs of industrial research<sup>2</sup> or fifty per cent (50%) of the costs of pre-competitive development activity<sup>3 4</sup>, and that such assistance is limited exclusively to:
    - (i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);
    - (ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
    - (iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;
    - (iv) additional overhead costs incurred directly as a result of the research activity;
    - (v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.
  2. Assistance to disadvantaged regions within the territory of a country of export or origin pursuant to a general framework of regional development<sup>5</sup> and non-

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<sup>1</sup> The allowable levels of non-actionable assistance referred to in this subparagraph shall be established by reference to the total eligible costs incurred over the duration of an individual project.

<sup>2</sup> The term “industrial research” means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

<sup>3</sup> The term “pre-competitive development activity” means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

<sup>4</sup> In the case of programmes which span industrial research and pre-competitive development activity, the allowable level of non-actionable assistance shall not exceed the simple average of the allowable levels of non-actionable assistance applicable to the above two categories, calculated on the basis of all eligible costs as set forth in items (i) to (v) of this subparagraph.

<sup>5</sup> A “general framework of regional development” means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development



specific within the meaning of Section 12 within eligible region provided that:

- (i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;
  - (ii) the region is considered as disadvantaged on the basis of neutral and objective criteria<sup>6</sup>, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;
  - (iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:
    - one of either income per capita or household income per capita, or GDP per capita, which must not be above eighty-five per cent (85%) of the average for the territory concerned;
    - unemployment rate, which must be at least one hundred ten per cent (110%) of the average for the territory concerned; as measured over a three-year period; such measurement, however, may be composite one and may include other factors.
3. Assistance to promote adaptation of existing facilities<sup>7</sup> to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on foreign firms, provided that the assistance:
- (i) is a one-time non-recurring measure; and
  - (ii) is limited to twenty per cent (20%) of the cost of adaptation; and
  - (iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by the foreign firms; and
  - (iv) is directly linked to and proportionate to a foreign firm's planned reduction of nuisance and pollution, and does not cover any manufacturing cost savings which may be achieved; and

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subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

<sup>6</sup> "Neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programme shall include ceilings on the amount of assistance which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises so as to be specific as defined in Section 12 of this IRR.

<sup>7</sup> The term "existing facilities" means facilities that have been in operation for at least two years at the time when new environmental requirements are imposed.

- (v) is available to all foreign firms which can adopt the new equipment and/or production processes.
- (c) Likewise, the following categories of domestic support measures that are exempt from the reduction commitments under the WTO Agreement on Agriculture shall be non-actionable: Provided, however, That:
  - 1. they have no, or at most minimal, trade-distorting effects or effects on production;
  - 2. they are provided through a publicly-funded government programme not involving transfers from consumers; and
  - 3. they do not have the effect of providing price support to foreign producers.

In addition, policy-specific criteria and conditions are set out below.

## **1. General Services**

Policies in this category involve expenditures (or revenue foregone) in relation to programmes which provide services or benefits to agriculture or the rural community in the country or export or origin. They shall not involve direct payments to foreign producers or processors. Such programmes, which include but are not restricted to the following list, shall meet the general criteria in paragraphs c.(i) to c.(iii) above and the policy-specific conditions set out below:

- (i) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;
- (ii) pest and disease control, including general and product-specific pest and disease control measures, such as early warning systems, quarantine and eradication;
- (iii) training services, including both general and specialist training facilities;
- (iv) extension and advisory services, including the provision of means to facilitate the transfer of information and the results of research to foreign producers and consumers;
- (v) inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardization purposes;
- (vi) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and
- (vii) infrastructural services, including: electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

## **2. Public stockholding for food security purposes<sup>8</sup>**

This includes expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in the national legislation of the country of export or origin. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the foreign government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

## **3. Domestic food aid<sup>9</sup>**

This includes expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of population in need.

Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the foreign government shall be made at current market prices and the financing and administration of the aid shall be transparent.

## **4. Direct payments to foreign producers**

Support provided through direct payments (or revenue foregone, including payments in kind) to foreign producers for which exemption from reduction commitments under the WTO Agreement on Agriculture is claimed shall meet the basic criteria set out in paragraph c.1 to c.3 above, plus the specific criteria applying to individual types of direct payment as set out in paragraphs 5 through 12 below. Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paragraphs 5 through 12, it shall conform to criteria (ii) through (v) in paragraph 5, in addition to the general criteria set out in paragraph c.1 to c.3.

## **5. Decoupled income support**

- (i) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.

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<sup>8</sup> For the purposes of this paragraph, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the aggregate measurement support as defined in Article 6 of the WTO Agreement on Agriculture.

<sup>9</sup> (& <sup>1</sup>) For the purposes of this particular paragraph and that succeeding it, the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.

- (ii) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.
- (iii) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (iv) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.
- (v) No production shall be required in order to receive such payments.

**6. Government financial participation in income insurance and income safety-net programmes:**

- (i) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds thirty per cent (30%) of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.
- (ii) The amount of such payments shall compensate for less than seventy per cent (70%) of the producer's income loss in the year the producer becomes eligible to receive this assistance.
- (iii) The amount of any such payments shall relate solely to income; it shall not relate to the type or volume of production (including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.
- (iv) Where a producer receives in the same year payments under this paragraph and under paragraph 8 (relief from natural disasters), the total of such payments shall be less than one hundred per cent (100%) of the producer's total loss.

**7. Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters**

- (i) Eligibility for such payments shall arise only following a formal recognition by the foreign government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the country of export or origin) has occurred or is occurring; and shall be determined by a production loss which exceeds thirty per cent (30%) of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.
- (ii) Payments made following a disaster shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.

- (iii) Payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production.
- (iv) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.
- (v) Where a foreign producer receives in the same year payments under this paragraph and under paragraph 6 (income insurance and income safety-net programmes), the total of such payments shall be less than one hundred per cent (100%) of the foreign producer's total loss.

**8. Structural adjustment assistance provided through producer retirement programmes**

- (i) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities.
- (ii) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

**9. Structural adjustment assistance provided through resource retirement programmes**

- (i) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.
- (ii) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of three years, and in the case of livestock on its slaughter or definitive permanent disposal.
- (iii) Payments shall not require or specify any alternative use for such land or other resources which involves the production of marketable agricultural products.
- (iv) Payments shall not be related to either the type or quantity of production or to the prices, domestic or international, applying to production undertaken using the land or other resources remaining in production undertaken using the land or other resources remaining in production.

**10. Structural adjustment assistance provided through investment aids**

- (i) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly-defined government programme for the reprivatization of agricultural land.
- (ii) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than as provided for under criterion (v) below.
- (iii) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

- (iv) The payments shall be given only for the period of time necessary for the realization of the investment in respect of which they are provided.
- (v) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.
- (vi) The payments shall be limited to the amount required to compensate for the structural disadvantage.

#### **11. Payments under environmental programmes**

- (i) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.
- (ii) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

#### **12. Payments under regional assistance programme**

- (i) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.
- (ii) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.
- (iii) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (iv) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.
- (v) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.
- (vi) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.

#### **Section 4. Initiation of Action**

- (a) Information and other forms of assistance to the domestic industry:

The Secretary and the Commission shall, upon request, make available to the public general information concerning the countervailing measure and other forms of trade remedies. Such

information may include the procedures to be followed and the appropriate dates or milestones in investigations related to the imposition of such measures.

The Secretary and the Commission shall also provide, to the extent possible at all stages of the action, assistance and advice to interested parties which seek to obtain the remedies and benefits of the countervailing measure, such assistance and advice to include the following:

1. Information on import volumes and values, at the specific product level;
2. Information on prices and costs of production in other countries, and other relevant information known to the Secretary and the Commission; and
3. Informal legal and technical advice on the appropriateness of invoking the countervailing measure as a remedy for the trade problem, and on the availability of information in support of the proposal.

Philippine trade, agriculture or finance attaches and other consular officials or attaches in the countries of export or origin may be requested to furnish the applicant pertinent information or documents related to the allegedly subsidized product within a period not exceeding forty-five (45) days from receipt of a request.

The Department and the Commission shall coordinate with their representatives in other countries and/or tap other information sources in building a database of these information.

Receipt of these forms of assistance shall not be construed as a guarantee that the recipient will prevail in the countervailing investigation.

(b) Petitioners

1. Any person whether natural or juridical, representing a domestic industry may file a written application using the pro-forma protestant's questionnaire, duly supported by relevant documents which shall include evidence of (a) the subsidy, and if possible, the kind and amount of such subsidy, (b) injury, and (c) causal link between the importation of the allegedly subsidized products and the alleged injury. The applicant shall submit four (4) copies of the application, including annexes, two (2) copies of which shall contain the non-confidential summaries of the information submitted. Simple assertions, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph.
2. A properly documented application shall contain relevant evidence and information reasonably available to the applicant on the following:
  - (i) identity of the applicant and a description of the volume and the value of his domestic production of the like product;
  - (ii) a list of all known domestic producers of the like product and, if possible, a description of the volume and value of domestic production of the like product accounted for by such producers, if the application is made on behalf of the domestic industry,
  - (iii) complete description of the allegedly subsidized product;
  - (iv) name of the country of export or origin of the allegedly subsidized product;

- (v) identity of each known foreign exporter or producer of the allegedly subsidized product, or their duly authorized representative organizations;
  - (vi) list of known persons importing the allegedly subsidized product with their last known address;
  - (vii) estimated aggregated or cumulative quantity, the port and the date of arrival, the import entry declaration of the allegedly subsidized product;
  - (viii) the nature, extent and estimated amount of the subsidy in question;
  - (ix) number of persons employed in the affected domestic industry;
  - (x) total capital invested, production and sales volume, and aggregate production capacity of the domestic industry;
  - (xi) effect of the price of the allegedly subsidized products on the price of the like product in the domestic market; and
  - (xii) consequent impact of the importation of the allegedly subsidized products on the domestic industry demonstrated by relevant factors and indices having a bearing on the state of the domestic industry as enumerated in Section 12 of this IRR.
3. The application shall include a certification signed by the applicant that the information presented therein are accurate and complete to the best of his knowledge.
- (c) Filing of a Petition
- 1. The duly accomplished application, using the pro-forma protestant's questionnaire, shall be filed with the Secretary of Trade and Industry in the case of a non-agricultural product, or with the Secretary of Agriculture in the case of an agricultural product.
  - 2. Within three (3) days from the receipt of the application, the Secretary shall notify the Secretary of Finance and furnish him with a complete copy or summary of the application, or of the information supporting a countervailing action in case the Secretary initiates the investigation on his own motion.

The Secretary of Finance shall inform the Commissioner of Customs, within three (3) days from receipt of the notice by the Secretary as defined in the preceding paragraph, of the filing and pendency of the application or information for countervailing action and instruct him to secure such import entries without liquidation until the end of the investigation. The Commissioner of Customs shall gather and furnish the Secretary, within five (5) days from receipt of the instructions of the Secretary of Finance, certified true copies of all import entries and relevant documents covering such allegedly subsidized product imported into the Philippines during the last twelve (12) months preceding the date of application. He shall likewise make similar additional reports on the number, volume, and value of the importation of the allegedly subsidized product to the Secretary every ten (10) days thereafter. However, under no circumstances shall a countervailing investigation hinder the implementation of the procedures for Customs clearance.



3. The Secretary shall preliminarily screen the application if the following conditions are met:
  - (i) The application is signed;
  - (ii) All relevant questions are answered or the reasons for the absence of information are given;
  - (iii) The attachments to the application are complete; and
  - (iv) The application is supported by a sufficient part of the Philippine industry producing the like product.
4. Failure to supply all the information sought in the application will lead to the non-acceptance thereof. The Secretary shall check the consistency of the information provided in the application against other information available to him. The Secretary shall clarify any unclear or ambiguous statement with the applicant.
5. As soon as the requirements are completed, the Secretary shall acknowledge in writing that he has already accepted a properly documented application. The date of the Secretary's letter shall be considered as day zero (0) of the ten (10) days within which he is required to determine whether there is sufficient evidence to justify the initiation of an investigation. The Secretary shall issue the letter as soon as practicable from his receipt of a properly documented application. If the applicant decides to give the Secretary further information in support of an application, the ten (10) day period herein mentioned shall recommence from the date of the submission of the new information. After this period, the Secretary shall no longer entertain any information that may be provided by the applicant.

(d) Requirements for Initiation

1. The Secretary shall, within ten (10) days from the date of his letter accepting the properly documented application referred to in Section 3.c.5, examine the accuracy and adequacy of the petition to determine whether there is sufficient evidence to justify the initiation of an investigation. The evidence of both subsidization and injury shall be considered simultaneously (a) in the decision on whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting at the earliest date when provisional measures may be applied.

In assessing the sufficiency of evidence provided in the application, the Secretary will only satisfy himself that there is evidence that indicates subsidization or the likelihood of subsidization, and material injury based on the evidence submitted by the applicant.

If there is no sufficient evidence to justify the initiation of an investigation, the Secretary shall dismiss the petition and notify the Secretary of Finance, the Commissioner of Customs and other parties concerned regarding such dismissal.

2. An investigation shall not be initiated unless it has been determined that the application has been made "by or on behalf of the domestic industry." The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than fifty per cent (50%) of the total production of the like product produced by that portion of the domestic industry expressing either support for, or opposition to, the

application. In cases involving an exceptionally large number of producers, the degree of support and opposition may be determined by using a statistically valid sampling technique or by consulting their representative organizations

3. No investigation shall be initiated when domestic producers expressly supporting the application account for less than twenty five per cent (25%) of total production of the like product produced by the domestic industry.
4. In exceptional circumstances, the Philippines may be divided into two (2) or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market have the dominant market share and (b) the demand in such market is not substantially supplied by other producers elsewhere in the Philippines.
5. If in special circumstances, the Secretary decides to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, he shall proceed only if he has sufficient evidence of the existence of a subsidy, material injury, and a causal link to justify the initiation of an investigation.

These special circumstances may involve, among others:

- (i) The absence of a national organization of producers, if there are many small-scale producers of the like product which cannot be regarded as a separate industry under the criteria set forth in Section 4.d.4 of this IRR;
  - (ii) The inability of a national or local organization of producers to file an application due to limited resources; or
  - (iii) The presence of a national or local emergency which prevents the affected domestic industry from filing a petition.
6. All persons having or against whom any right to relief with respect to the alleged subsidy may, upon the discretion of the Secretary or the Commission, join as petitioners or be joined as respondents in one (1) petition, where any question of law or fact common to all such petitioners and respondents may arise in such countervailing action.

## **Section 5. Notice to and Consultation with the Government of the Country of Export or Origin**

Upon his acceptance of a properly documented application and before proceeding to initiate an investigation, the Secretary shall notify the government of the country of export or origin about the impending countervailing investigation and provide it a copy of the non-confidential summary of the application. However, the Secretary shall refrain from publicizing the application for the initiation of the investigation before a decision has been made to do so.

Upon notification, the government of the country of export or origin shall also be invited for consultation with the objective of clarifying the situation as to matters referred to in the application, and arriving at a mutually agreed solution. Reasonable opportunity for continued consultation shall be provided throughout the investigation period. No affirmative determination whether preliminary or final shall be made without having reasonable opportunity for consultation. The government of the country of export or origin concerned shall, upon request, be permitted access to non-confidential evidence, including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

## **Section 6. Notice to Concerned Parties and Submission of Evidence**

- (a) Within four (4) days after he makes the decision to initiate a preliminary investigation, the Secretary shall cause the publication of the notice of initiation of preliminary investigation in two (2) newspapers of general circulation. The date of publication shall be considered as day one (1) of the initiation of the investigation.

The public notice of the initiation of an investigation shall contain, unless otherwise made available through a separate report, adequate information on the following matters:

- (i) The nature of the allegedly subsidized product;
  - (ii) The country concerned;
  - (iii) A summary of the particulars of the injury and basis of the alleged subsidization in the application;
  - (iv) The time period for the submission of evidence or views to the Secretary;
  - (v) The date of the initiation of the investigation; and
  - (vi) The address to which representations by interested parties shall be directed.
- (b) Within five (5) days from the initiation of the investigation and after having notified the country of export or origin, the Secretary shall:
- (i) Identify all known interested parties i.e. importer, foreign exporter and/or producer, and notify them of the initiation of the investigation;
  - (ii) Furnish them with a copy of the initiation report, petitioner's application, and its annexes, subject to the requirement to protect confidential information; and
  - (iii) Provide them with a pro-forma respondent's questionnaire.

The respondent is required to submit within thirty (30) days from the receipt of such notice the completed pro-forma respondent's questionnaire and other evidence and information to dispute the allegations contained in the application.

In cases where the number of known interested parties is so large that it is impractical to provide a non-confidential copy of the documents to each of them, a copy will be given to the government of the country of export or origin and to the representative organizations. These documents shall also be made available to other interested parties involved upon request.

The notice shall be deemed to have been received one (1) week from the date on which it was sent by registered mail or transmitted by fax to the respondent or the appropriate diplomatic or official representative of the country of export or origin.

Philippine trade or agriculture attaches and other consular officials in the concerned country of export or origin may also be provided a copy of the notice of initiation, the non-confidential application, and the pro-forma respondent's questionnaire.

- (d) The Secretary and the Commission shall provide opportunities for industrial users of the allegedly subsidized product, and for representative consumer organizations in cases where such product is commonly sold at the retail level, to provide information which is relevant to the investigation.
- (e) The pro-forma respondent's questionnaire shall be used by both the Secretary and the Commission in their respective inquiries. Whenever any interested party fails to respond adequately to such questionnaire, is unable to produce information requested, refuses access to, or otherwise fails to provide any other information within the period allowed for the investigation, or otherwise significantly impedes the investigation, the preliminary or final determination of the conditions required in a countervailing investigation shall proceed on the basis of facts available. Even though the information provided by an interested party may not be complete in all respects, this shall not be disregarded provided the interested party is deemed to have acted to the best of his ability.
- (f) If any evidence or information is not accepted by the Secretary, the supplying party shall be informed forthwith of the reason/s therefor, and may, where deemed warranted by the Secretary, be given an opportunity to explain or provide further evidence or information: Provided, That this will not impede the investigation considering the period required for the Secretary to make a preliminary determination. If the additional submissions are not satisfactory, the reasons for the rejection of such evidence or information shall be given in the report containing the preliminary determination.
- (g) Information which is confidential, either by nature or which is provided on a confidential basis, shall not be disclosed without the express permission or consent of the supplying party. The interested parties providing confidential information shall be required to provide two (2) copies of non-confidential summaries thereof to be placed in a public file and made available to all interested parties upon the initiation of the investigation. These summaries shall contain sufficient details to permit a reasonable understanding of the confidential information to enable other parties to respond to claims based on such information. In exceptional circumstances, wherein summarization of confidential information is not possible, the supplying party must state the reason why it cannot be provided. Where any request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in summary form, such information may be disregarded, unless it can be shown from appropriate sources that the information is correct.

The following information may be considered confidential if so designated by the supplying party:

1. Business or trade secrets concerning the nature of the product or the production process;
2. Production costs but not the identities of the production components, unless these are trade secrets;

3. Distribution costs but not the channels of distribution;
  4. Terms of sale but not those offered to the public;
  5. Prices of individual sales, likely sales, or other offers but not components of prices, such as transportation, if based on published schedules, dates of sale, order numbers, or product descriptions (other than business or trade secrets described in (1));
  6. Names of particular customers, distributors, or suppliers but not destinations of sale or designation of type of customer, distributor or supplier, unless the destination or designation would reveal the name;
  7. Exact amount of the benefit applied for or received by a person or business entity from each of the subsidy programmes under investigation or review, but not descriptions of the operations of such programmes, or the amount included in official public statements or documents or publications, or the countervailable subsidy rate calculated for each country;
  8. Names of particular persons from whom confidential information was obtained; and
  9. Any other specific business information which, if released to the public, would cause substantial harm to the competitive position of the supplying party.
- (h) In order to verify information contained in the application or to obtain further details, the Secretary may conduct visits or ocular inspections of the facilities of the domestic producers and importers, as well as the government of the country of export or origin. The Secretary may also visit other such parties that have not provided submissions during the investigation.
- (i) A public file shall be maintained by the Secretary and the Commission for all investigations initiated. It shall contain a copy of all submissions from interested parties and all relevant correspondences concerning the investigation, subject to confidentiality considerations. The public file will be made available to any interested party upon request.

The following will normally be considered as public information:

1. Factual information of a type that has been published or otherwise made available to the public by the supplying party;
2. Factual information that is not designated as confidential by the supplying party;
3. Factual information that although designated as confidential by the supplying party:
  - (i) is in a form that cannot be associated with a particular party; or
  - (ii) has been determined by the authorities as not deserving confidential treatment;

4. Publicly available laws, regulations, decrees, orders and other official issuances of a country; and
  5. Written arguments relating to the investigation that is not designated as confidential.
- (j) The preliminary findings of the Secretary, if affirmative, together with the records of the case, shall be transmitted to the Commission for its immediate formal investigation within three (3) days from adopting the decision. However, if the preliminary findings of the Secretary are negative, the case shall be dismissed.

#### **Section 7. Preliminary Determination**

- (a) Not later than twenty (20) days from receipt of the answer of the respondents and other interested parties, the Secretary shall make a preliminary determination of the need for the imposition of a provisional countervailing duty on the basis of the application, the answers of the respondents, and the respective supporting documents or information.
- (b) The Secretary shall essentially determine the following in the preliminary determination:
1. Nature and amount of the specific subsidy being enjoyed by the allegedly subsidized product in the country of export or origin;
  2. Presence and extent of material injury or threat of material injury to the domestic industry producing the like product or the material retardation of the growth or prevention of the establishment of a domestic industry producing the like product; and
  3. Causal relationship between the allegedly subsidized product and the material injury or threat of material injury to the affected domestic industry or the material retardation of the growth, or prevention of the establishment of a domestic industry producing the like product.
- (c) The preliminary findings of the Secretary, together with the records of the case, shall be transmitted to the Commission for its immediate formal investigation within three (3) days from adopting the decision.

#### **Section 8. Appraisement and Delivery of Products Upon Filing of Provisional Countervailing Duty.**

- (a) If the preliminary finding of the Secretary is affirmative and to prevent further injury during the investigation, the Secretary shall immediately issue through the Secretary of Finance, written instructions to the Commissioner of Customs to collect the provisional countervailing duty in the form of a cash bond, in addition to any other duties, taxes and charges imposed by law on the allegedly subsidized product.
- (b) Within three (3) days from receipt of instructions from the Secretary of Finance to impose the cash bond, the Commissioner of Customs shall instruct the Collector of Customs to collect the regular duties, taxes and other charges, if any, on the shipment involved so that such regular duties could be paid together with the cash bond. The

Commissioner of Customs may only authorize the release of the allegedly subsidized product after the regular duties have been paid and the cash bond has been deposited.

- (c) The cash bond shall be deposited with a government depository bank and shall be held in trust for the respondent who posted the bond.
- (d) The posting of the cash bond shall only be required no sooner than sixty (60) days from the date of initiation of the investigation. The date of the initiation of the investigation shall be the date the Secretary publishes such notice in two (2) newspapers of general circulation.
- (e) The provisional countervailing duty may be imposed for a period not exceeding four (4) months.
- (f) The relevant provisions of Section 18 of this IRR shall be followed in the application of the provisional countervailing duty.

#### **Section 9. Termination of Investigation**

- (a) The Secretary or the Commission, as the case may be, shall *motu proprio* terminate the investigation at any stage of the proceedings if the amount of the subsidy is *de minimis* or where the volume of the subsidized product, or the injury is negligible, as defined in existing international trade agreements of which the Republic of the Philippines is a party.
- (b) A subsidy shall be deemed *de minimis* if it is less than one per cent (1%) ad valorem as a percentage of export price. For developing countries the threshold shall be two per cent (2%) and for least developed countries, it is three per cent (3%).
- (c) The volume of imports from a particular country shall normally be regarded as negligible if it accounts for less than three per cent (3%) of the total imports of said product in the Philippines, unless countries which individually account for less than three per cent (3%) of the total imports of the said product in the Philippines collectively account for more than seven per cent (7%) of the total imports of that product. On the other hand, the volume of imports from a developing country shall be considered negligible if it accounts for less than four per cent (4%) of the total imports of the product, unless such developing countries which individually account for less than four per cent (4%) of the total imports of the product collectively account for more than nine per cent (9%) of the total imports that product.

#### **Section 10. Formal Investigation by the Commission**

- (a) Within three (3) working days upon its receipt of the records of the case from the Secretary, the Commission shall start the formal investigation and shall accordingly notify in writing all parties on record and, in addition, give public notice of the exact initial date, time and place of its formal investigation through the publication of such particulars, and a concise summary of the application, in two (2) newspapers of general circulation.
- (b) The Commission shall conduct the formal investigation to determine the following:
  - 1. If the domestic product is identical or alike in all respects to the allegedly subsidized product, or in the absence of the former, another product which,

although not alike in all respects, has characteristics closely resembling those of the allegedly subsidized product.

2. If the foreign exporter or producer of the allegedly subsidized product is conferred benefits through the implementation of a specific subsidy programme by the government of the country of export or origin;
  3. The presence and extent of material injury or the threat thereof to the domestic industry, or the material retardation of the growth or prevention of the establishment of a domestic industry producing the like product;
  4. The existence of a causal relationship between the allegedly subsidized product and the material injury or threat of material injury to the affected domestic industry, or the material retardation of the growth, or the prevention of the establishment of a domestic industry producing the like product;
  5. The countervailing duty to be imposed; and
  6. The duration of the imposition of the countervailing duty.
- (c) The Commission shall require all interested parties to appear for a preliminary conference on the schedules and procedure of the investigation, the nature of the administrative and fact-finding proceedings, the non-applicability of the technical rules of procedures provided by the Rules of Court, the non-availability of confidential information, and other related matters relative to the speedy disposition of the case and shall require them to submit their respective initial memoranda or position papers within fifteen (15) working days from notice.
- (d) The formal investigation shall be conducted in a summary manner. No dilatory tactics or unnecessary or unjustified delays shall be allowed and the technical rules of evidence used in regular court proceedings shall not be applied.
- (e) The Commission shall, after due notification, conduct a public consultation to give all parties directly affected and such other interested parties that in the judgment of the Commission are entitled to attend, an opportunity to be heard and to present evidence bearing on the subject matter. The purpose of this public consultation is to determine whether or not the allegedly subsidized product is imported at a lesser price due to the advantage from the direct or indirect subsidy, and by reason thereof, the domestic industry producing the like product is being injured materially.
- (f) Where the information provided in the pro-forma questionnaires submitted by the protestant and respondent are insufficient, the Commission may require the submission of additional information from the applicant/s, domestic producers, importers, foreign exporters or producers, that may be useful in the overall evaluation of the case.
- (g) The Commission shall require any interested party to allow it access to, or otherwise provide, necessary information to enable the Commission to expedite the investigation. The Commission may conduct on-site investigations of the domestic producers, importers, foreign exporters or producers concerned, as well as the governments of the countries of export or origin, including ocular inspections of their facilities, to verify information provided or obtain further details. The Commission may also visit such other parties who have not provided a submission to the



investigation. Visits or inspections may be conducted by the Commission even without the presence of interested parties.

In the case of an on-site investigation involving a foreign exporter or producer, the Commission shall obtain the agreement of the firms concerned. As soon as the agreement of the parties has been confirmed, the Commission shall notify the government of the country of export or origin of the names and addresses of the parties to be visited and the dates agreed upon. Sufficient advance notice shall be given to the parties in question before the visit is made.

Prior to the visit, these firms shall be advised of the general nature of the information to be verified and of any further information which needs to be provided, although this shall not preclude requests to be made on the spot for further details to be provided in the light of information obtained. Inquiries or questions by the Commission or the parties shall, whenever possible, be answered before the visit is made. The Commission shall make the results of such on-site investigation available to such parties subject to the requirements of protecting confidential information.

The procedures described above shall also apply to on-site investigations carried out in the territory of countries other than the countries of export or origin.

- (h) In case any or all of the parties on record fail to submit their answers to position papers or to questionnaires within the prescribed period, the Commission shall base its findings on the best information available.
- (i) The relevant provisions of Section 6 of this IRR, especially those on the treatment of confidential information and acceptance of evidence, shall also be followed in the formal investigation.

#### **Section 11. Determination of the Existence of a Subsidy**

- (a) In general, the period of investigation (POI) for the determination of subsidization shall cover import transactions made at least six (6) months prior to the date the investigation is initiated: Provided, however, That this period shall coincide with the financial year applicable to Philippine industries whenever possible. In some cases, the POI may be adjusted to cover a shorter period in order to take into account other considerations that will ensure the appropriateness of the chosen POI, e.g., availability of data, drastic increase in the importation of the subsidized product, facility in the verification of data.
- (b) The Secretary and the Commission shall make a determination regarding the existence of a subsidy when:
  - 1. The government in the country of export or origin of the imported product extends financial contribution to the foreign exporter or producer of the product, in the form of:
    - (i) A direct transfer of funds such as a grant, loan or equity infusion; or
    - (ii) A potential direct transfer of funds or assumption of liabilities such as loan guarantees; or

- (iii) The foregone or uncollected government revenue that is otherwise due from the foreign exporter or producer of the product: Provided, however, That the exemption of any exported product from duty or tax imposed on the like product when destined for consumption in the country of export or origin, or the refunding of such duty or tax, shall not be deemed to constitute a grant of a subsidy; Provided, further, That should a product be allowed drawback by the country of export or origin, only the ascertained or estimated amount by which the total amount of duties and/or internal revenue taxes was discounted or reduced, if any, shall constitute a subsidy; or
- (iv) The provision of goods or services other than general infrastructure; or
- (v) The government purchase of goods from the foreign exporter or producer; or
- (vi) The payments to a funding mechanism; or
- (vii) Other financial contributions to a private body to carry out one or more of the activities mentioned in subparagraphs (i) to (vii) above; or
- (viii) Direct or indirect income or price support; and

2. When there is a benefit conferred.

For the purpose of this section, "government" shall refer to the national, provincial, state, municipal, regional or other authorities of a foreign country or a body that exercises authority for an association of nations, or a state owned-or controlled corporation, or any other public body.

- (c) In the determination of whether or not a subsidy is specific, the Secretary and the Commission shall apply the following principles:
  - 1. Where the government in the country of export or origin of the imported product explicitly limits access to the subsidy to certain enterprises, such subsidy shall be specific;
  - 2. Where such government through a law or regulation establishes objective criteria and conditions governing the eligibility for, and amount of a subsidy, specificity shall not exist: Provided, however, That the eligibility is automatic and that such criteria or conditions are strictly adhered to. Objective criteria shall mean those which are neutral, do not favour certain enterprises over others, and are economic in nature and horizontal in application, such as the number of employees or size of the enterprise;
  - 3. In case a subsidy in law appears to be non-specific according to subparagraphs (1) and (2) above, but there are reasons to believe that the subsidy may in fact be specific, factors that may be considered are:
    - (i) The use of a subsidy programme by a limited number of certain enterprises for a relative ly longer period;

- (ii) The grant of a disproportionately large amount of subsidy to certain enterprises, and the exercise of wide and unwarranted discretion for granting a subsidy; and
- 4. A subsidy which is limited to certain enterprises located within a designated geographical region within the territory of the government in the country of export or origin shall be specific. The setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be specific subsidies.
- (d) Notwithstanding the provisions of the preceding paragraph, the following subsidies shall be deemed to be specific:
  - 1. Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and
  - 2. Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Subsidies shall be considered to be contingent in fact upon export performance when it is demonstrated that the granting of subsidy is tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is provided to enterprises which export shall not for that reason alone be considered to be an export subsidy.
- (e) Any determination of specificity under this Section shall be clearly substantiated on the basis of positive evidence.
- (f) The countervailing duty shall be equal to the full amount of the subsidy ascertained by the Secretary or the Commission, as the case may be, which is equal to the cost incurred by the government, or the benefit conferred on the recipient of the subsidy in accordance with the following guidance:
  - 1. The provision of equity capital by a foreign government shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including the provision of risk capital) of private investors in the country of export or origin;
  - 2. The provision of a loan by a foreign government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market. In this case, the benefit to the recipient shall be deemed to be the difference between those two amounts;
  - 3. The provision of a loan guarantee by a foreign government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan without the government guarantee. In this case, the benefit to the recipient shall be deemed to be the difference between those two amounts adjusted for any difference in fees;

4. The provision of goods or services, or the purchase of goods by a foreign government shall not be considered as conferring a benefit unless the goods or services are provided for less than adequate remuneration, or the goods or services are purchased for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions in the country of export or origin for the goods and services in question, taking into account price, quality, availability, marketability, transportation and other conditions of purchase or sale.
- (g) The amount of the countervailable subsidies shall be determined based on the unit of the subsidized product that is imported, whenever practicable. This provision, however, will not preclude the Commission from using other methods of estimating the margin of subsidization.

In the case of an imported product processed from an input, on which the demand for the input is substantially dependent on the demand for the imported product and the processing operation adds only limited value to the imported product, countervailable subsidies to be provided to either producers or processors of the input shall be deemed to be provided with respect to the production or exportation of the imported product: Provided, however, That the input is physically consumed in the production of the imported product, with normal allowance for waste: Provided, further, That it can be established that the subsidies to the input actually benefited the producer or exporter of the imported product: Provided, finally, That in the case of subsidies in the form of indirect tax rebates and duty drawbacks, the provisions of Annex II of the WTO Agreement on Subsidies and Countervailing Measures shall apply.

- (h) Where the Secretary or the Commission, as the case may be, is satisfied that sufficient information has not been furnished or is not available to ascertain the amount of subsidy, such amount shall be determined based on all verifiable information available to the Secretary or the Commission.

## **Section 12. Determination of Material Injury or Threat Thereof**

- (a) The Secretary and the Commission shall determine the presence and extent of material injury to the domestic industry as a result of the importation of the subsidized products on the basis of positive evidence and shall require an objective examination of, but shall not be limited to, the following:
  1. The rate of increase and amount of the importation of the subsidized products, either in absolute terms or relative to production or consumption in the domestic market;
  2. The effect of the importation of the subsidized products on the prices in the domestic market for the like product, that is, whether there has been a significant price undercutting by the subsidized products as compared with the price of the like product in the domestic market, or whether the effect of such subsidized products is otherwise to depress prices to a significant degree or to prevent price increases which otherwise would have occurred to a significant degree. Price depression shall refer to the extent by which the domestic producer reduced its selling price in order to compete with the subsidized product, while price suppression shall refer to the extent by which the subsidized product prevented the domestic producer from increasing its

selling price to a level that will allow full recovery of its cost of production;  
and

3. The effect of the importation of the subsidized products on the domestic producers or the resulting retardation of the growth or prevention of the establishment of a domestic industry producing the like product, including an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry concerned, such as, but not limited to, actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of subsidization; and actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.
- (b) The extent of injury caused by the importation of the subsidized products on the domestic industry shall be determined by the Secretary and the Commission upon examination of all relevant evidence. All known factors other than the importation of the subsidized product which, at the same time injure the domestic industry, shall also be examined and the injuries caused by these factors must not be attributed to the subsidized products. The relevant evidence may include, but shall not be limited to, the following:
1. the volume and value of non-subsidized imports of the product concerned;
  2. contraction in demand or changes in consumption patterns;
  3. trade restrictive practices and competition between foreign and domestic producers;
  4. developments in technology; and
  5. export performance and productivity of the domestic industry.
- (c) The effect of the importation of the subsidized products shall be assessed in relation to the domestic production of the like product by separate identification of that production based on such criteria as production processes, sales and profits. If such is not possible, the effect of the importation of the subsidized products shall be assessed by the examination of the production of the narrowest group or range of products which includes the like product for which the necessary information is available.
- (d) A determination of a threat of material injury shall be based on facts and not mere allegation, conjecture or remote possibility. The change in circumstances creating a situation in which the importation of the subsidized product will cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the following shall be considered collectively, *inter alia*,:
1. The nature of the subsidy in question and the trade effects likely to arise therefrom;
  2. A significant rate of increase in the importation of the subsidized products into the domestic market indicating the likelihood of substantially increased importations;

3. A sufficient freely disposable, or an imminent substantial increase in, production capacity of the foreign exporter indicating the likelihood of substantially increased subsidized exports in the domestic market, taking into account the availability of other export markets to absorb any additional exports;
4. Whether such subsidized products are entering at prices that will have a significantly depressing or suppressing effect on domestic prices, and will likely increase demand for further importation of the subsidized products; and
5. Inventories of the product being investigated.

Not one of these factors can, by itself, necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further importation of subsidized products are imminent and that, unless protective action is taken, material injury would occur. In cases where injury is threatened by the importation of subsidized products, the application of countervailing measures shall be considered and decided with special care.

- (e) In the case where the effect of the subsidized import will materially retard the growth or prevent the establishment of a domestic industry, information on employment, capital investments, production and sales, and the production capacity of the domestic industry can be augmented or substituted by showing through a factual study, report or other data that an industry which has potential to grow domestically is adversely affected by the importation of the subsidized product. For this purpose, the Secretary shall direct the conduct of continuing studies to identify and determine the specific industries, whether locally existing or not, which have the potential to grow or be established domestically and whose growth or establishment will be retarded or prevented by the importation of the subsidized product.

### **Section 13. Voluntary Undertaking**

- (a) The countervailing investigation may be suspended or terminated without the imposition of provisional measures or definitive countervailing duties upon the recommendation of the Commission and acceptance by the Secretary, of a satisfactory voluntary undertaking executed, under oath, by:
  1. the foreign exporter and/or the producer that they will increase their prices or will cease exporting to the Philippines at the subsidized price; or
  2. the government of the country of export or origin that it will eliminate or limit the subsidy or take other measures concerning its effects; thereby eliminating the material injury to the domestic industry producing the like product.

Price increases under such undertakings shall not be higher than necessary to eliminate the injury from subsidization. Parties that offer an undertaking shall be required to provide a non-confidential version of such undertaking so that it may be made available to interested parties.

- (b) An undertaking shall neither be sought nor accepted unless a preliminary affirmative determination of subsidization and injury caused by such subsidization has been made..
- (c) An undertaking may not be accepted if its acceptance is impractical, e.g., if the number of actual or potential foreign exporters is too large or for other reasons, including reasons of general policy. The proponent of the undertaking shall be informed of the reason for non-acceptance of the proposed undertaking and he shall be given an opportunity to submit his comments.

Even if such undertaking is accepted, the investigation shall nevertheless be continued and completed by the Commission if the government of the country of export or origin so desires or upon the advice of the Secretary. In such a case, the undertaking shall automatically lapse in case of a negative finding. However, in instances where the negative determination is due in large part to the existence of a price undertaking, the Commission may require that the undertaking be maintained for at least two (2) years, unless the foreign exporter proves to the Commission that the undertaking is no longer necessary. In the case of an affirmative finding, the undertaking shall continue for only as long as the need exists, and to the extent necessary, to counteract the subsidization, but not to exceed five (5) years from the date of the affirmative finding.

Should the investigation be discontinued as a result of the acceptance of an undertaking, this undertaking shall be effective for five (5) years from the date of the acceptance thereof, unless the foreign exporter proves to the satisfaction of the Commission that the undertaking is no longer necessary.

- (d) Undertakings may be suggested but no foreign exporter, producer or government of the country of export or origin shall be forced to enter into such an undertaking. Failure of such parties to offer or accept an invitation for an undertaking shall in no way prejudice the consideration of the case. However, it may be determined that a threat of injury is more likely to be realized if the importation of the subsidized product continues.
- (e) Upon acceptance by the Secretary of an undertaking, he shall request the Secretary of Finance to issue written instructions to the Commissioner of Customs to suspend collection of the provisional countervailing duty.
- (f) A foreign exporter, producer or government of the country of export or origin from whom an undertaking has been accepted may be requested to provide periodic information to ensure that the conditions of the undertaking have been fulfilled. They must ensure that future export prices are not less than the level agreed upon in the undertaking. If at any time the subsidized products are exported at a price lower than that agreed to in the undertaking, consideration will immediately be given to applying the provisional duty to the shipment, using the best information available in cases where the investigation which led to the undertaking has not been concluded. In case of breach or withdrawal of an undertaking by any party, a definitive duty shall be imposed in accordance with Section 18 of this IRR; Provided, that the investigation which led to the undertaking was concluded with a final affirmative determination and that the party concerned has been given an opportunity to comment, except where he himself has withdrawn the undertaking.

- (g) In case of a violation of an undertaking, the Secretary shall request the Secretary of Finance to issue written instructions to the Commissioner of Customs authorizing the collection of provisional or definitive duties, as the case may be, on subsidized products exported to the Philippines not more than 90 days before the application of the provisional duty except to importations in which provisional countervailing duties have already been collected before the violation of the undertaking.

#### **Section 14. Cumulation of Importation**

When the importation of products from more than one country are simultaneously the subject of a countervailing investigation, the Secretary or the Commission may cumulatively assess the effects of such subsidized products only if it is determined that:

- (a) the amount of subsidy established in relation to the importation from each country is more than the *de minimis* as defined in Section 9 of this IRR;
- (b) the volume of importation of such subsidized products from each country is not negligible as defined in Section 9 of this IRR; and
- (c) a cumulative assessment of the effects of the importation of such subsidized products is warranted in light of the conditions of competition between the imported products, and the conditions of competition between the imported products and the like products.

#### **Section 15. Report of the Commission and Submission of Final Determination to the Secretary.**

- (a) Before making a final determination, the Commission shall inform all interested parties in writing of the essential facts under consideration and the initial findings as contained in the draft report, giving due regard to the protection of confidential information. Such disclosure shall be made within three (3) days from the date of completion of the draft report, after which the parties shall be given five (5) days from notice to defend their interests in writing.
- (b) The Commission shall conclude its formal investigation and submit a report of its findings, whether favorable or not, to the Secretary within one hundred twenty (120) days from receipt of the records of the case. The Commission shall also furnish the parties concerned with copies of its report.

#### **Section 16. Imposition of the Countervailing Duty**

- (a) The Secretary shall, within ten (10) days from receipt of the affirmative final determination by the Commission, issue a Department Order imposing a definitive countervailing duty on the subsidized product, unless he has earlier accepted an undertaking from the foreign exporter, producer or government of the country of export or origin. The Department Order shall become executory after the lapse of the period for reconsideration in case no motion for reconsideration has been filed, and upon a negative resolution of the motion for reconsideration in case the same has been filed. He shall furnish the Secretary of Finance with the copy of the Order and request the latter to direct the Commissioner of Customs to collect, within three (3) days from receipt thereof, the definitive countervailing duty, in addition to any other duties, taxes, and charges imposed by law on such product. The transmittal letter shall state the date when the Order is expected to be executory.



Simultaneous with the issuance of the Department Order, the Secretary shall also furnish copies of the same to the parties concerned.

- (b) Upon receipt of the Order from the Secretary of Finance, the Commissioner of Customs shall order the Collector of Customs concerned to proceed with the final appraisement of the subsidized product.
- (c) After the collection of the countervailing duty, the Commissioner of Customs shall submit to the Secretary, through the Secretary of Finance, certified monthly reports on the disposition of the cash bond and the amounts of the countervailing duties collected. In the case of a voluntary undertaking, the Commissioner of Customs shall submit certified weekly reports on the customs value of the subsidized product that are imported within the applicable period.
- (d) In case a cash bond has been filed, the same shall be applied to the countervailing duty assessed. If the cash bond is in excess of the countervailing duty assessed, the remainder shall be immediately returned to the importer, including interest earned, if any: Provided, That no interest shall be payable by the government on the amount to be returned. If the assessed countervailing duty is higher than the cash bond filed, the difference shall not be collected.
- (e) In case of a negative finding by the Commission, the Secretary shall issue, through the Secretary of Finance, after the lapse of the period for the petitioner to appeal to the Court of Tax Appeals, an Order for the Commissioner of Customs to immediately release the cash bond to the importer. All the parties concerned shall also be duly notified of the dismissal of the case.

#### **Section 17. Period Subject to the Countervailing Duty**

- (a) A countervailing duty may be levied retroactively from the date the cash bond has been imposed and onwards, where a final determination of injury is made, or in the absence of provisional measures, a threat of injury has led to actual injury.
- (b) Where a determination of threat of injury or material retardation is made, countervailing duties may be imposed only from the date of determination thereof.
- (c) Notwithstanding the preceding paragraph, a countervailing duty may be levied on the subsidized product imported into the country not more than ninety (90) days prior to the date of application of the cash bond, when the authorities have determined for the subsidized product in question that the injury is caused by the massive importation of the subsidized product within three (3) months from the initiation of the investigation which, in light of the timing and the volume of the subsidized products and other circumstances (such as a rapid build-up of inventories of the imported product), is likely to seriously undermine the remedial effect of the definitive countervailing duty to be applied: Provided, That the importers concerned have been given an opportunity to comment.

In determining whether the importation of the subsidized product is massive, the Commission shall examine:

1. The volume and value of the importation of the subsidized products;
2. Seasonal trends; and

3. The share in the domestic market accounted for by the subsidized products.

#### **Section 18. Application of the Countervailing Duty**

- (a) The amount of the countervailing duty shall not exceed the amount of the subsidy that is found to exist under Section 12 of this IRR.
- (b) The countervailing duty shall be collected, in the appropriate amounts on a non-discriminatory basis, on imports of subsidized products from the countries in question, except on those imports from which undertakings have been accepted.
- (c) When the domestic industry has been defined as referring to producers in a certain area as provided under Section 4.d.4 of this IRR, a countervailing duty shall be levied only on the subsidized products consigned for final consumption to that area.
- (d) In cases where products under investigation are not imported directly from the country of origin but are exported through an intermediate country, the transactions shall be regarded as having taken place between the country of origin and the Philippines.
- (e) The countervailing duty shall be paid either through cash or cashier's/manager's check. All such monies collected shall be deposited by the Commissioner of Customs in a special fund, to be known as the Trade Remedies Fund, created for that purpose.

#### **Section 19. Duration and Review of the Countervailing Duty**

- (a) As a general rule, the imposition of a countervailing duty shall remain in force only as long as the need exists, and to the extent necessary, to counteract subsidization which is causing or threatening to cause material injury to the domestic industry or material retardation of the growth or prevention of the establishment of such an industry.
- (b) The duration of the definitive countervailing duty shall not exceed five (5) years from the date of its imposition, or from the date of the most recent review if that review has covered both subsidization and injury, unless the Commission has determined, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or in behalf of the domestic industry at least six (6) months prior to the termination date, that the termination of the countervailing duty will likely lead to the continuation or recurrence of subsidization and injury. The countervailing duty shall remain in force pending the outcome of such an expiry review.

An expiry review shall be initiated when there is sufficient evidence that the expiry of the definitive countervailing duty would likely result in a continuation or recurrence of subsidization and injury. Such a likelihood may be indicated, for example, by evidence of continued subsidization and injury or evidence that the removal of injury is partly or solely due to the existence of the duty or evidence that the circumstances of the foreign exporters, or market conditions, are such that these would indicate the likelihood of further injurious subsidization.

In carrying out investigations under this paragraph, the foreign exporters, the representatives of the country of export or origin and the domestic producers and

importers shall be provided with the opportunity to comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of the definitive countervailing duty would be likely, or unlikely, to lead to the continuation or recurrence of subsidization and injury.

The Commission shall cause the publication of a notice of impending expiry of the effectivity of the countervailing duty in two (2) newspapers of general circulation on the first quarter of the final year of the period of application of the definitive countervailing duty, to give the domestic producers adequate time to lodge a request for an expiry review.

- (c) The Commission may also, *motu proprio* or upon the direction of the Secretary, conduct an interim review of the need for the continued imposition of the countervailing duty, taking into consideration the need to protect the existing domestic industry against subsidization. Any interested party with substantial positive information may also petition the Secretary for an interim review of the continued imposition of the countervailing duty; Provided, that at least one (1) year has elapsed since the imposition of the countervailing duty

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the duty is no longer necessary to offset subsidization and/or that the injury would be unlikely to continue or recur if the duty was removed or varied, or that the existing duty is not, or is no longer, sufficient to counteract the subsidization which is causing injury.

In carrying out investigations pursuant to this Section, the Commission may, *inter alia*, consider whether the circumstances with regard to subsidization and injury have changed significantly, or whether existing measures are achieving the intended results, in removing the injury previously established. In these respects, account shall be taken of all relevant and duly documented evidence in the final determination.

- (d) If the Commission determines that the countervailing duty is no longer necessary or warranted, the Secretary shall, upon the recommendation of the Commission, issue a Department Order immediately terminating the imposition of the countervailing duty. All parties concerned, including the Secretary of Finance and the Commissioner of Customs, shall be notified accordingly of such termination.
- (e) The provisions of this IRR regarding evidence and procedures, including the conduct of public consultations and public hearings, shall apply to any review carried out under this Section. Any such review shall be carried out expeditiously and concluded not later than one hundred fifty (150) days from the date of the initiation of such review.

## **Section 20. Motion for Reconsideration**

- (a) No motion for reconsideration shall be allowed on the imposition of provisional measures under Section 8 of this IRR.
- (b) A motion for reconsideration in writing, with proof of prior service to the opposing parties, may be filed with the Secretary within fifteen (15) days from receipt of the Department Order imposing the definitive countervailing duty, for one or more of the following reasons affecting the substantial rights of said party:

1. Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired;
2. Newly discovered evidence, which the aggrieved party could not, with reasonable diligence, have discovered and produced at the public consultations, and which if presented would probably alter the result; or
3. The final countervailing duty imposed is excessive, or the evidence is insufficient to justify the final order, or the order is contrary to law.

Such motion for reconsideration shall not be accepted without proof of service thereof to affected parties.

- (c) Upon receipt of the motion for reconsideration, the Secretary shall transmit the same within one (1) working day from receipt thereof to the Commission and the Secretary of Finance. Comments of the affected parties to the motion for reconsideration may be filed with the Commission within ten (10) days from receipt thereof. The Commission shall resolve the motion for reconsideration within ten (10) days from receipt of the comments of the opposing parties. Thereafter, the Commission shall transmit its report to the Secretary within one (1) working day from the date of the report.
- (d) Within three (3) days from receipt of the report of the Commission, the Secretary shall issue a formal resolution on the motion for reconsideration based on the report of the Commission and shall immediately notify the Secretary of Finance of said resolution.
- (e) No second motion for reconsideration shall be allowed.

## **Section 21. Judicial Review**

- (a) Any interested party in a countervailing investigation who is adversely affected by a final ruling in connection with the imposition of a countervailing duty may file with the Court of Tax Appeals, a petition for the review of such ruling within thirty (30) days from his receipt of notice of the final ruling.
- (b) The filing of such petition for review shall not in any way stop, suspend, or otherwise hold the imposition or collection, as the case may be, of the countervailing duty on the subsidized product. The rules of procedure on petitions for review filed with the Court of Tax Appeals shall be applied.

## **Section 22. Public Notice**

- (a) The Secretary or the Commission shall inform in writing all interested parties on record and, in addition, give public notice by publishing in two (2) newspapers of general circulation when:
  1. initiating an investigation;
  2. concluding or suspending investigation;

3. making any preliminary or final determination whether affirmative or negative;
  4. making a decision to accept or to terminate an undertaking; and
  5. terminating a definitive countervailing duty .
- (b) The public notice shall contain, unless otherwise made available through a separate report, adequate information on the following matters:
1. sufficient explanation on the matters of fact and law and, the reasons which have led to the imposition of the measure, or the reasons for the acceptance of the undertaking, or the reasons for the acceptance or rejection of relevant arguments or claims made by the interested parties;
  2. names of the supplying countries concerned;
  3. description of the product;
  4. margins of subsidization established and the full explanation of the reasons for the methodology used;
  5. considerations relevant to the injury determination; and
  6. the main reasons leading to the determination.

### **Section 23. Administrative Support**

- (a) The Departments of Trade and Industry (DTI) and of Agriculture (DA) and the Commission, shall create or designate a special unit within their agencies that will undertake the functions relative to the disposition of countervailing cases.
- (b) All countervailing duties collected shall be earmarked and deposited in the Trade Remedies Fund which is created for the strengthening of the capabilities of these agencies to undertake their responsibilities.
- (c) The portion of the Trade Remedies Fund representing countervailing duties collected on subsidized non-agricultural products shall be shared equally by the DTI and Commission, while the portion of the Fund representing collections on subsidized agricultural products shall be shared equally by the DA and the Commission.
- (d) The Departments of Finance and Budget and Management, and the Bureaux of Customs and Treasury, together with the DTI, DA, and the Commission, shall jointly promulgate the procedures for the creation, management and utilization of the Trade Remedies Fund.

### **Section 24. Repealing Clause**

All rules and regulations, ordinances, executive or administrative orders and such other presidential issuances related to countervailing duties which are inconsistent with any of the provisions of RA 8751 and this IRR are hereby repealed, amended or otherwise modified accordingly.

**Section 25. Effectivity**

This Order shall take effect seven (7) days from publication of a notice of its issuance in a newspaper of general circulation.

**Section 26. Separability Clause.**

If any of the provisions of this IRR is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in force and effect

ANNEX A

**OTHER AGRICULTURAL PRODUCTS NOT FALLING UNDER  
CHAPTERS 1 TO 24 OF THE TARIFF AND CUSTOMS CODE  
OF THE PHILIPPINES**

| HS Code or heading | Product description  |
|--------------------|--|
| 2905.43            | Mannitol   |
| 2905.44            | D glucitol (sorbitol)  |
| 33.01              | Essential oils including concretes and absolutes; and similar oils   |
| 35.01              | Casein, caseinates and other casein derivatives; casein glues  |
| 35.02              | Albumins, albuminates and other albumin derivatives  |
| 35.03              | Gelatin and gelatin derivatives  |
| 35.04              | Peptones and their derivatives   |
| 35.05              | Dextrins and other modified starches   |
| 3809.10            | Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparation, with a basis of amylaceous substances |
| 3824.60            | Sorbitol other than that of subheading No. 2905.44   |
| 41.01              | Raw hides and skins of bovine or equine animals  |
| 41.02              | Raw skins of sheep or lambs  |
| 41.03              | Other raw hides and skins  |
| 43.01              | Raw furskins (including tails, paws, etc.)   |
| 50.01              | Silkworm cocoons suitable for reeling  |
| 50.02              | Raw silk   |
| 50.03              | Silk waste   |
| 51.01              | Wool, not carded or combed   |
| 51.02              | Fine or coarse animal hair, not carded or combed   |
| 51.03              | Waste of wool or fine or coarse animal hair  |
| 52.01              | Cotton, not carded or combed   |
| 52.02              | Cotton waste   |
| 52.03              | Cotton, carded or combed   |
| 53.01              | Flax, raw or processed but not spun  |
| 53.02              | True hemp, raw or processed but not spun   |