Pursuant to Article 19:5 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, the Philippine Mission is submitting herewith a copy each of Presidential Decree No. 1973 amending Subsection (a) of Section 302 - Countervailing Duty - of Presidential Decree No. 1464, otherwise known as the Tariff and Customs Code of 1978, as amended, and Department of Finance Order No. 300 containing the rules and regulations for the enforcement of Section 302.

PRESIDENTIAL DECREE NO. 1973

AMENDING SUBSECTION (a) OF SECTION THREE HUNDRED TWO OF PRESIDENTIAL DECREE NUMBERED FOURTEEN HUNDRED SIXTY-FOUR, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF 1978, AS AMENDED

WHEREAS, the Philippines as a Contracting Party to the General Agreement on Tariffs and Trade (GATT) has acceded to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of GATT, otherwise known as the Code on Subsidies and Countervailing Duties;

WHEREAS, upon accession to the GATT Code on Subsidies and Countervailing Duties the Philippines has to align its national legislation, regulations and administrative procedures on countervailing investigations with the provisions of the Agreement;

WHEREAS, Section 302 of the Tariff and Customs Code, as amended, does not provide for an injury criterion before a countervailing duty could be imposed against a foreign article and, therefore, not in accord with the GATT Code on Subsidies and Countervailing Duties.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order:
SECTION 1. Subsection (a) of Section 302 of Presidential Decree Numbered Fourteen Hundred Sixty-Four, as amended, is hereby further amended to read as follows:

Section 302. Countervailing Duty

"... whenever any article is directly or indirectly granted any bounty, subsidy or subvention upon its production, manufacture or exportation in the country of origin and/or exportation, and the importation of which has been determined by the Minister, after investigation and report of the Commission, as likely to injure established industry, or prevent or considerably retard the establishment of an industry in the Philippines, there shall be levied a countervailing duty equal to the ascertained or estimated amount of such bounty, subsidy or subvention: provided, that the injury criterion to a domestic industry shall be applied only in the case of imports from countries which adhere to GATT Code on Subsidies and Countervailing Duties: Provided, further that the exemption of any exported article from duty or tax imposed on like articles when destined for consumption in the country of origin and/or exportation or the refunding of such duty or tax, shall not be deemed to constitute a grant of a bounty, subsidy or subvention within the meaning of this section: Provided, furthermore, that should an article be allowed drawback by the country of origin and/or exportation, only the ascertained or estimated excess of the amount of the drawback over the total amount of the duties and/or internal taxes, if any, shall constitute a bounty, subsidy or subvention: Provided, finally, that petitions for imposition of countervailing duty shall be filed with the Minister of Finance. Upon finding of a prima facie case of bounty, subsidy or subvention enjoyed by the imported article and injury to, or likelihood of injury to a domestic industry, the Minister shall refer the case to the Tariff Commission for investigation and shall instruct the Commissioner of Customs to require the filing of countervailing bonds for importations entered during the pendency of countervailing proceedings.

SECTION 2. Repealing Clause - Any provision of law, decree, rules and regulations inconsistent herewith are hereby deemed repealed, amended or modified accordingly.

SECTION 3. Effectivity Clause - This Decree shall take effect immediately.

DONE in the City of Manila this 13th day of April nineteen hundred and eighty-five.

(signed) FERDINAND E. MARCOS
President
Republic of the Philippines

By the President:

JOAQUINOT VENUS, JR. (signed)
Deputy Presidential Executive Assistance
DEPARTMENT ORDER NO. 300

SUBJECT: Rules and Regulations for the Enforcement of Section 302 of the Tariff and Customs Code Regarding the imposition of Countervailing Duty

By authority of subsection (c), Section 302 of Republic Act No. 1937, otherwise known as the Tariff and Customs Code of the Philippines, hereinafter referred to as the Code, the following rules and regulations are hereby promulgated for the guidance of all concerned:

Section 1. Scope of this Department Order. - This Department Order shall apply to dutiable foreign articles imported or brought into the Philippines on or after 1 July 1957 on which any bounty, subsidy or subvention has been, or is being, or will be, granted bestowed or paid, directly or indirectly (in any manner including the exemption from taxes and duties not usually or ordinarily extended to such or like products destined for consumption in the country of origin and/or exportation or the refund in the form of drawback in excess of the total amount of duties and/or internal taxes, if any collected on the articles), upon their production, manufacture or export, by the country, dependency, colony, province or other political subdivision of government, person, partnership, association, cartel or corporation whence exported or wherein grown or manufactured, and the importation of which is likely to materially injure an established industry, or prevent or considerably retard the establishment of an industry in the Philippines.

Section 2. Importations consignments outside the scope of this Department Order. - The following importations and/or consignments shall not be proceeded against under section 302 of the Code;

(a) All foreign articles exempted from the payment of customs duties under the Code, other existing laws and regulations, treaties, conventions and agreements entered into by the Government of the Philippines with other foreign governments.

(b) Foreign articles exempted only from the payment of customs duties or taxes imposed on such or like articles when destined for consumption in the country of origin and/or exportation or the refunding of such duty or tax.

(c) Foreign articles allowed drawbacks by the country of origin and/or exportation when the ascertained or estimated amounts of the drawbacks do not exceed the total amount of the duties and/or internal taxes, if any, paid on the imported materials used in the foreign articles.

(d) Any single importation or consignment the dutiable value of which does not exceed five hundred pesos (P 500.00) provided that (1) such importation is for the exclusive and direct personal use or consumption compatible with the needs, income and social standing or position of the owner and the members of his immediate family dependent upon him for support.
and not intended for barter, sale or hire or other commercial purposes, and
(2) the importer or shipper has not received the benefit of exemption from
proceedings under section 302 for the same or like article within one hundred
and eighty (180) days immediately preceding the importation or consignment
in question.

Section 3. Initiation of countervailing duty proceedings. - (a) The
Tariff Commission on its own motion may conduct an investigation under
section 302 of the Code.

(b) Any appraiser or other customs official and employees who obtains
an information that any bounty, subsidy or subvention has been, or is being,
or will be, granted, bestowed or paid with respect to a dutiable foreign
article imported, or being, or will be, imported into the Philippines, as
will require action under section 302 of the Code shall communicate such
information promptly, through the Collector of Customs concerned, to the
Commissioner of Customs who shall transmit the same through the Secretary of
Finance to the Tariff Commission. Every such communication shall contain or
be accompanied by a statement of substantially the same information as is
required in paragraph (d) hereof if in the possession of the appraiser or
customs official or employee or readily available to him.

(c) Any interested person, whether in the public service or otherwise,
or any other government agency, who has reason(s) to believe that any
bounty, subsidy or subvention has been, or is being, or will be granted,
bestowed or paid, directly or indirectly, upon the production, manufacture or
exportation of any dutiable foreign article imported or to be imported into
the Philippines, may communicate directly to the Tariff Commissioner his/its
belief in writing.

(d) The information or complaint shall be accompanied by a statement
substantially containing the following data, if in the possession of the
informant or complainant or readily available to him:

1. The name and address of the importer or consignee or of the person
by whom or for whose account the article is imported.

2. The name and address of the foreign producer or exporter.

3. A sample or detailed description of the article.

4. The name of the country of origin, production or exportation; and
the port(s) or probable port(s) of importation into the
Philippines.

5. All pertinent facts obtainable as to any bounty, subsidy or
subvention granted, bestowed or paid, or is being, or will be,
granted, bestowed or paid, with respect to such article.

6. Such other information as may be deemed necessary to establish
material injury, or likelihood of material injury to, or
prevention, or considerable retardation of, an industry in the
Philippines.
The above data shall be supplied as fully as possible but complete submission therefore shall not be necessary in cases where the informer or complainant may neither possess nor have access to certain of the information requested. Information or complaints of possible violation of the provisions of section 302 of the Code shall be given due course under the same section as long as they include data substantially sufficient to establish a reasonable ground to believe that there would be possible violation of section 302 of the Code. The Tariff Commission shall, during the investigation, make appropriate enquiries regarding required data.

Section 4. Withholding of Final Appraisal and Delivery of Articles. - The appraiser shall withhold the final appraisal of the article(s) until further instruction by the proper authorities. Pending the investigation and final decision of the case, the Commissioner of Customs or the Collector of Customs concerned may authorize the release of the article(s) in question upon the filing of a bond at double the dutiable value thereof provided there is no valid reason for withholding the release thereof under other existing laws and regulations.

Owners, importers or consignees of articles which may have arrived during sixty (60) days immediately preceding the filing of information or complaint of possible violation of section 302 of the Code and which have been delivered under section 1503 of the Code shall, pending final decision, return the articles in question to the Collector of Customs concerned or file additional bond in an amount equal to double the dutiable value thereof.

For the above purposes, the Department of Finance and the Tariff Commission shall immediately advise the Commissioner of Customs or the Collector of Customs concerned of receipt of information or complaint of possible violation of section 302 of the Code.

The advisement shall be affected by telephone to be followed immediately by written notification, or by wire if the Collector of Customs being advised is not of the Port of Manila.

Section 5. Injury, what constitutes. - In determining injury, prevention or considerable retardation of the establishment of an industry in the Philippines, the following, in addition to other pertinent matters, shall be considered:

(a) Whether or not the articles under investigation are of a class or kind actually produced or manufactured in the Philippines in quantities sufficient to supply at least ten per centum (10%) of local consumption (arrived at by taking the sums of the average local production and average importation and subtracting therefrom average exportation, if any, for two years or any representative period immediately preceding the institution of proceedings provided herein).

Foreign articles are deemed identical or similar to a class or kind actually produced or manufactured in the Philippines when they are both made substantially of like materials, they serve the same purpose and/or they have approximately the same commercial value;

(b) The local counterpart goods are offered for sale to all wholesalers or retailers on equal terms under like conditions having regard to the local customs and usage of trade;
(c) The foreign articles under investigation directly, not remotely, have caused or may cause a downward trend of production, employment, prices, profits and wages in the domestic industry concerned, or a decline in sales, and increase in imports (either actual or relative to domestic production), a higher or growing inventory, or a decline in the proportion of domestic market supplied by domestic producers of goods similar or identical to the imports.

Section 6. Report of Tariff Commission. - The Tariff Commission shall make a report of its investigation under section 302 of the Code to the Secretary of Finance within forty-five (45) days after receipt of information, protest or complaint filed under section 3 hereof. The period for the submission of the report may be extended for valid reasons such as the delayed submission of pertinent data without which the question of violation of section 302 of the Code cannot be determined intelligently.

The report shall include, among other things, a concise statement of the facts of the case, the main questions at issue, the recommendation of the Tariff Commission and the reason(s), law, authorities, etc. supporting such recommendation.

Section 7. Decision of the Secretary of Finance. - Within fifteen (15) days from the date of receipt of the report of the investigation of the Tariff Commission and the complete records of the case, the Secretary shall decide whether or not the articles in question are granted, bestowed or paid or are being granted, bestowed or paid or will be granted, bestowed or paid, bounty, subsidy or subvention. The decision of the Secretary shall be published in the Official Gazette and in newspapers of wide circulation. The interested parties, the Tariff Commission, the Bureau of Customs and other proper government agencies shall each be furnished with a copy of the decision. Should the Secretary decide that there is no violation of section 302 of the Code, the Commissioner of Customs shall proceed to act on the importation as if the article has not been proceeded against under the said section 302.

Section 8. Levy and Collection of Countervailing Duty. - Upon receipt of a decision from the Secretary of Finance declaring a finding of violation of section 302 of the Code, the Commissioner of Customs shall cause the levy and collection, in addition to any other duties, taxes and charges imposed by law on such article, of a countervailing duty equal to the ascertained or estimated amount of the bounty, subsidy or subvention.

The Commissioner of Customs shall likewise cause the assessment, levy and collection of a countervailing duty on subsequent importations of articles of the kind or class as those found by the Secretary of Finance to be violative of section 302 of the Code upon proof satisfactory to the Collector of Customs concerned that such articles are produced in or exported from the country/countries that granted, bestowed or paid, or that is/are granting, bestowing or paying bounty, subsidy or subvention upon the production and/or exportation of the articles in question. The Collector of Customs concerned shall make quarterly reports, through the Commissioner of Customs, to the Secretary of Finance of imposition of countervailing cases.

Any aggrieved party who is not satisfied with the application of a decision in countervailing cases to subsequent importations may file a protest with the Secretary within thirty (30) days from the date of the
payment under protest of the countervailing duty. The Secretary shall determine whether or not the article in question is covered by a previous finding under section 302 of the Code. When the classification of a subsequent importation is uncertain, the Secretary of Finance shall cause such importation to be proceeded against in the same manner as when an information of complaint of a possible violation of section 302 of the Code has been brought for the first time to his attention.

Section 9. Discontinuance of imposition of countervailing duty. - Application for the discontinuance of the imposition of countervailing duty may be filed by the owner, importer, consignee or agent, or by any interested party with the Tariff Commission, Manila, furnishing a copy of such applications to the Collector of Customs concerned, in a form to be prescribed by the Tariff Commission.

Whenever, after due investigation, it is ascertained that the conditions which necessitated the imposition of a countervailing duty have ceased to exist, the Tariff Commission shall so certify to the Secretary of Finance who shall take the necessary steps to suspend or discontinue the imposition of such duty. Any order made under this section by the Secretary shall be published in the Official Gazette.

Section 10. Convention of currency. - For the purpose of ascertaining, determining or estimating the exact amount of the bounty, subsidy or subvention, the amount, if in foreign currency, shall be converted into Philippine Currency of the current rate or value specified or published by the Central Bank of the Philippines.

Section 11. Publicity. - Philippine customs and tariff officials shall give due publicity to the provisions of this Order.

Section 12. This Order shall take effect on 1 July 1957.

(signed) JAIME HERNANDEZ
Secretary