



HOUSE OF REPRESENTATIVES

H. No. 7613

INTRODUCED BY HONORABLE TEVES, SALCEDA, PUNZALAN JR., SUAREZ, BACULIO, LOPEZ (E.), DURANO, GOLEZ, BRIONES, REYES JR., DUMPIT, SINGSON, CUA, REYES (R.), AQUINO III, BONDOC, DIAZ, ROMAN, SARMIENTO (A.), SILVERIO, MALIKSI, NANTES, SAN LUIS, TAÑADA, ESPINOSA JR., GONZALES (R.), VILLANUEVA, PARAS, LORETO-GO, LOCSIN, NACHURA, LOBREGAT, SARMIENTO (R.), BASCUG, LIBARIOS, ANGPING, HIZON, NIEVA, PONCE JR., ZARTIGA, TUAZON, FUENTEBELLA, VERCELES JR., KINTANAR, PANCHO, OROLA JR., BACANI, LIM, ANDAYA (R.) JR., FUA JR., LOZADA JR., MAGTUBO, PICHAY JR., ECHIVERRI, ARROYO, EBALLE, MORENO, BAUTISTA, LARA, LAPUS, SUPLICO, LOPEZ (R.), DEQUÍÑA, DY JR., CANDAZO, PEREZ JR., GARCIA (E.) JR., NEPOMUCENO, BUESER, MADRONA, RECTO, YAPHA JR., LIBANAN, VICENCIO, ALVAREZ (P.), DILANGALEN, TAMMANG, COSALAN, CALALAY, LANOT, OCAMPO, OSABEL, PILAPIL, SARENAS, SYJUCO, JALA, LIBAN, MACARAMBON JR., AUMENTADO, ABAD, VELOSO, BANAAG, ABAYON, TULAGAN, JAAFAR, ACOSTA, CRUZ (T.), SALUDO JR., ADIONG, ALVAREZ (H.), APOSTOL, BUNYE, DATUMANONG, GUNIGUNDO I, SANDOVAL II, FORTUNO, JACOB, GARCIA (M.), LEVISTE, MONTEMAYOR, ROXAS II, QUIMPO, ANGARA-CASTILLO, VERGARA, GULLAS, BADELLES, ABUEG JR., ALBANO III, AQUINO (A.), BELMONTE JR., CAGAS, CALIMBAS-VILLAROSA, CERILLES, DOMINGUEZ, DUTERTE, ESPINA, FALCON, FARIÑAS, GARIN, GONZALEZ (J.), IPONG, JARAULA, LAGMAN-LUISTRO, LAUREL IV, MACIAS II, MONTILLA, NAVARRO JR., PAEZ, RODRIGUEZ JR., RODRIGUEZ (O.), ROMUALDO, TEODORO JR., VILLAR JR. AND UNDE, PER COMMITTEE REPORT NO. 320

AN ACT PROTECTING LOCAL INDUSTRIES BY PROVIDING SAFEGUARD MEASURES TO BE UNDERTAKEN IN RESPONSE TO IMPORT SURGES AND PROVIDING PENALTIES FOR VIOLATION THEREOF

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

1 SECTION. 1. *Short Title.* – This Act shall be known as the
2 “Safeguard Measures Act of 1999”

3 SEC. 2. *Declaration of Policy.* – It shall be the policy of the State
4 to protect Filipino enterprises against unfair foreign competition and trade
5 practices. Towards this end, the government shall provide safeguard
6 measures to protect local industries from serious injury or threat of serious
7 injury directly attributable to the increased importation of any product and
8 to facilitate the positive adjustment of these industries to import
9 competition.

10 SEC. 3. *Scope of Application.* – A safeguard measure may be
11 imposed by this Act on a product being imported irrespective of its source.

12 SEC. 4. *Definition of Terms.* – For purposes of this Act, the
13 following shall mean:

14 (a) “Act” shall refer to the Safeguard Measures Act of 1999;

15 (b) “Agricultural Product” refers to a specific commodity listed
16 under Chapters 1-24 of the Harmonized System (HS) of Commodity
17 Classification as used in the Tariff and Customs Code of the Philippines;

18 (c) “Commission” refers to the Tariff Commission;

19 (d) “Domestic Industry” refers to the producers as a whole of like
20 or directly competitive products manufactured or produced in the
21 Philippines or to those whose collective output of like or directly
22 competitive products constitutes a major proportion of the total domestic
23 production of those products;

1 (e) "Directly Competitive Product" is understood to be a domestic
2 product whose consumption is inversely related to the consumption of
3 imported product under consideration, such as a substitute;

4 (f) "General Safeguard Committee" is a cabinet-level Committee
5 composed of the Secretaries of Agriculture, Trade and Industry, Finance,
6 Budget and Management, Labor and Employment and Science and
7 Technology;

8 (g) "Interested Parties" refers to among others, domestic producers,
9 importers and exporters;

10 (h) "Like Product" shall be understood to mean a product or article
11 which is identical or alike in all respects to the imported product or in its
12 absence, a product, although not alike in all respects has characteristics
13 closely resembling those of the imported product;

14 (i) "Market Access Opportunity" is the percentage of the total
15 annual volume of imports of an agricultural product to the corresponding
16 total volume of domestic consumption of the said product in the three (3)
17 immediately preceding years;

18 (j) "Minimum Access Volume (MAV)" is the amount of imports
19 of an agricultural product allowed to be imported into the country at a
20 customs duty lower than the out-quota customs duty;

21 (k) "Out-Quota Customs Duty" refers to the customs duty applied
22 on a given importation of an agricultural product in excess of the MAV;

1 (l) "Price Difference" is the amount obtained by subtracting the
2 annual Cost in Freight (C.I.F.) import price from the trigger price under
3 the price test of the special safeguard mechanism;

4 (m) "Secretary" shall refer to the Secretary of the Department of
5 Trade and Industry or the Secretary of the Department of Agriculture as
6 specified in this Act;

7 (n) "Serious Injury" shall be understood to mean a significant
8 overall impairment in the position of a domestic industry;

9 (o) "Threat of Serious Injury" shall be understood to mean a
10 serious injury that is clearly imminent;

11 (p) "Trigger Price" is the reference C.I.F. import price of an
12 agricultural product as determined in Section 6(D) of this Act, which is the
13 price benchmark for applying the special safeguard measure; and

14 (q) "Trigger Volume" is the reference volume of imports of a
15 product as determined in Section 5(B) and (C) of this Act, which is the
16 volume benchmark for applying the provisional or the special safeguard
17 measure.

18 SEC. 5. *General Safeguard Measures.* – The following shall be the
19 general safeguard measures to be undertaken to protect the local industries
20 from import surges.

1 (A) Conditions For the Application of the General Safeguard
2 Measure. – A general safeguard measure shall be applied if the following
3 requisites are met:

4 (1) There is an increased importation of the product whether in
5 absolute terms or relative to domestic production;

6 (2) There is serious injury or threat thereof to a domestic industry
7 that produces like or directly competitive products; and

8 (3) The increased importation has caused serious injury or threat
9 thereof to the domestic industry.

10 (B) Initiation of Action. – Upon (1) filing of a petition
11 accompanied by documents in support of facts, by any person, whether
12 natural or juridical, or a trade association, firm, certified or recognized
13 union, or group of workers, which is a representative of an industry, with
14 the Secretary of Agriculture in the case of an agricultural product, or the
15 Secretary of Trade and Industry in the case of a non-agricultural product;
16 (2) request of the President; (3) resolution of any of the following: House
17 or Senate Committee on Trade and Industry, House or Senate Committee
18 on Agriculture, or (4) the Secretary's own motion, whenever he has reason
19 to believe that conditions with respect to a particular product warrant a
20 general safeguard investigation; the Secretary shall, within five (5) days,
21 determine the existence of *prima facie* evidence of facts which establish

1 the conditions for the imposition of a safeguard measure as provided in
2 Section 5(A) hereof.

3 The Secretary shall extend legal, technical and other assistance to
4 the concerned domestic industry producers and their organizations at all
5 stages of the safeguards action.

6 (C) Investigation and Determination of Injury. – Within five (5)
7 working days from the receipt of the request from the Secretary, the
8 Commission shall publish notice of the commencement of the
9 investigation, and public hearings which shall afford interested parties and
10 consumers an opportunity to be present, or to present evidence, to respond
11 to the presentations of other parties and consumers, and otherwise be
12 heard. Evidences and positions with respect to the importation of the
13 subject article must be submitted within fifteen (15) days after the
14 hearings.

15 (1) In making determination of injury, the Commission shall take
16 into account all economic factors which it considers relevant, including but
17 not limited to:

18 (a) With respect to serious injury – the significant idling of
19 productive facilities in the domestic industry; the inability of a significant
20 number of firms to carry out domestic production operations at a
21 reasonable level of profit; and significant underemployment within the
22 domestic industry;

1 (b) With respect to threat of serious injury – a decline in sales or
2 market share, a higher and growing inventory, and a downward trend in
3 production, profits, wages, productivity, or employment (or increasing
4 underemployment) in the domestic industry; the extent to which firms in
5 the domestic industry are unable to generate adequate capital to finance the
6 modernization of their domestic plans and equipment, or are unable to
7 maintain existing levels of expenditures for research and development; and
8 the extent to which the Philippine market is the focal point for the
9 diversion of exports of such article to, or on imports of such article into,
10 third country markets; and

11 (c) With respect to substantial cause – an increase in imports,
12 either actual or relative to domestic production, and a decline in the
13 proportion of the domestic market supplied by domestic producers.

14 (2) In making determinations, the Commission shall:

15 (a) Consider the condition of the domestic industry over the
16 course of the relevant business cycle, but may not aggregate the causes of
17 declining demand associated with a recession or economic downturn in the
18 Philippine economy into a single cause of serious injury or threat of injury;
19 and

20 (b) Identify factors other than imports which may be a cause of
21 serious injury, or threat of serious injury, to the domestic industry.

22 The Commission shall include the results of the investigation in the

1 report to be submitted to the General Safeguard Committee under Section
2 5(F).

3 (3) For purposes of this subsection, domestic industry shall refer
4 to any of the following:

5 (a) In the case of a domestic producer which also imports, treat as
6 part of such domestic industry only its domestic production;

7 (b) In the case of a domestic producer which produces more than
8 one article, treat as part of such domestic industry only that portion or
9 subdivision of the produce which produces the like or directly competitive
10 article; and

11 (c) In the case of one or more domestic producers which produce
12 a like or directly competitive article in a major geographic area of the
13 Philippines and whose production facilities in such area for an article
14 constitute a substantial portion of the domestic industry in the Philippines
15 and primarily serve the market in such an area, treat as such domestic
16 industry only that segment of the production located in such area.

17 The investigation shall be terminated by the Commission within
18 sixty (60) days from receipt of the records of the case. The report shall be
19 submitted to the General Safeguard Committee within seven (7) days from
20 the termination of the formal investigation.

21 (D) Provisional Measures. – In critical circumstances where a
22 delay would cause damage which would be difficult to repair, the

1 Secretary, within three (3) days from the filing of the petition which
2 specifically states that critical circumstances exist, shall issue a written
3 instruction to the Bureau of Customs, through the Department of Finance,
4 to impose a provisional safeguard measure within three (3) days.
5 However, if the petitioners have sufficient evidence proving that the
6 volume of the imported products increased by not less than ten percent
7 (10%) of the average annual volume of imports over the thirty-six (36)
8 immediately preceding months or the share of such imported products in
9 the local market increased by not less than five (5) percentage points of
10 average annual total domestic sales over the thirty-six (36) immediately
11 preceding months, such evidence shall constitute a *prima facie* case of an
12 import surge. In such a case, the Secretary shall impose a provisional
13 safeguard measure as provided under this Section.

14 The preceding paragraph notwithstanding, the *prima facie* evidence
15 of an import surge may still be established even if the volume of imported
16 products increased by less than ten percent (10%) or the share of such
17 imported products in the local market increased by less than five (5)
18 percentage points over the average of the last thirty-six (36) immediately
19 preceding months, provided that there is sufficient evidence establishing
20 the requisites for the application of general safeguard measures as provided
21 in Section 5(A) hereof.

1 Such provisional measure shall take the form of tariff increases,
2 whether *ad valorem* or specific, to be paid through a cash bond, and/or
3 quantitative restrictions. The cash bond shall be promptly refunded to the
4 importer within ten (10) days from the finality of the order authorizing the
5 refund, if the results of the Commission's formal investigation will indicate
6 that increased imports have not caused or threatened to cause serious
7 injury to the domestic industry.

8 The duration of such provisional measure shall not exceed two
9 hundred (200) days and shall be counted as part of the initial period of the
10 imposition of the general safeguard measure as a result of a final positive
11 determination of injury.

12 (E) Adjustment Plan. – In the course of its investigation, the
13 Commission shall issue appropriate notice to representatives of the
14 concerned domestic industry or other parties, to submit an adjustment plan
15 to import competition within forty-five (45) days upon receipt of the
16 notice.

17 If the Commission makes an affirmative determination of serious
18 injury or threat thereof, any (a) firm in the domestic industry, (b) certified
19 or recognized union or group of workers in the domestic industry, (c) local
20 community, (d) trade association representing the domestic industry, or (e)
21 any other person or group of persons shall submit to the Commission
22 individual commitments regarding actions such persons and entities intend

1 to take to facilitate positive adjustment to import competition.

2 (F) Commission Recommendations. – Upon affirmative
3 determination of serious injury or threat thereof, the Commission shall
4 recommend any of the following:

5 (a) An increase in, or the imposition of, any duty, on the imported
6 article;

7 (b) A tariff-rate quota on the article;

8 (c) A modification or imposition of any quantitative restriction on
9 the importation of the article into the Philippines;

10 (d) An appropriate adjustment measure, including the provision of
11 trade adjustment assistance; or

12 (e) Any combination of the actions as provided herein.

13 The Commission shall hold a public hearing at which all interested
14 parties shall be provided an opportunity to present testimony and evidence.
15 In making its recommendation, the Commission shall take into account the
16 following:

17 (1) The form and amount of action that would prevent or remedy
18 the injury or threat thereof;

19 (2) The objectives and actions specified in the adjustment plan;

20 (3) Individual commitments; and

21 (4) Any information available to the Commission concerning
22 conditions of competition in domestic and world markets, and likely

1 developments affecting such conditions during the period for which action
2 is being requested.

3 (G) Report by the Commission. – Based on its findings, the
4 Commission shall submit: (a) the investigation report; (b) the proposed
5 recommendations; (c) a copy of the submitted adjustment plan; and (d)
6 commitments made by the domestic industry to facilitate positive
7 adjustment to import competition, for review by the General Safeguard
8 Committee within ninety (90) days from the date of initiation of
9 investigation.

10 The report shall also include a description of the short- and long-
11 term effects of the affirmative or negative recommendation, as the case
12 may be, to the petitioner, domestic industries, consumers, workers and the
13 communities where production facilities of such industry are located.

14 The Commission, after submitting the report to the General
15 Safeguard Committee, shall make it available to the public (except
16 confidential information obtained under Section 5(C) and publish a
17 summary report in two (2) newspapers of general circulation.

18 (H) Determination of Final Action. – Within thirty (30) days from
19 the receipt of the report of the Commission containing an affirmative
20 finding, the General Safeguard Committee shall convene to discuss the
21 investigative findings and make a recommendation to the President for
22 appropriate and feasible action which, as determined by the President, will

1 facilitate efforts by the domestic industry to make a positive adjustment to
2 import competition and provide greater economic and social benefits than
3 costs.

4 In determining what action to take under this section, the President
5 shall also take into account:

6 (a) The extent to which workers and firms in the domestic
7 industry are benefiting from adjustment assistance, manpower programs,
8 and are engaged in worker retraining efforts;

9 (b) The efforts being made by the domestic industry (based on the
10 adjustment plan and commitments submitted to the Commission) to make
11 a positive adjustment to import competition;

12 (c) The probable effectiveness of the actions that may be taken
13 under Section 5(J) to facilitate positive adjustment to import competition;

14 (d) The short- and long-term economic and social costs of the
15 actions and benefits, and other considerations relative to the position of the
16 domestic industry in the Philippine economy;

17 (e) Other factors related to the national economic interest of the
18 Philippines, including, but not limited to:

19 (i) The economic and social costs which would be incurred by
20 taxpayers, communities, and workers if import relief were not provided
21 under this Act;

22 (ii) The effect of the implementation of actions on consumers and

1 competition in domestic markets for the article; and

2 (iii) The impact on Philippine industries and firms as a result of
3 international obligations regarding compensation;

4 (f) The extent to which there is diversion of foreign exports to the
5 Philippine market by virtue of foreign restraints;

6 (g) The national security interests of the Philippines; and

7 (h) Other factors the Commission may consider.

8 (I) Imposition of a Safeguard Measure. – Within 30 days from
9 receipt of recommendation of the General Safeguard Committee, the
10 President may:

11 (a) Proclaim an increase in, or the imposition of, any duty;

12 (b) Proclaim a tariff-rate quota on the article;

13 (c) Proclaim a modification or imposition of any quantitative
14 restriction on the importation of the article into the Philippines;

15 (d) Implement one or more appropriate adjustment measures to
16 facilitate positive adjustment of domestic industry to import competition,
17 such as giving expedited consideration to petitions by workers and firms to
18 avail of adjustment assistance;

19 (e) Negotiate, conclude and carry out agreements with foreign
20 countries limiting the export from foreign countries and the import into the
21 Philippines of such article;

22 (f) Proclaim procedures necessary to allocate among importers by

1 the auction of import licenses quantities of the article that are permitted to
2 be imported into the Philippines;

3 (g) Initiate international negotiations to address the underlying
4 cause of the increase in imports of the article or otherwise to alleviate the
5 injury or threat thereof;

6 (h) Submit to Congress legislative proposals to facilitate the
7 efforts of the domestic industry to make a positive adjustment to import
8 competition;

9 (i) Undertake other action which may be performed by the
10 President under the authority of law and which the president considers
11 appropriate and feasible for purposes of this Section; and

12 (j) Simultaneously undertake any of the actions enumerated
13 above.

14 The President may, within fifteen (15) days after receiving the
15 recommendation from the General Safeguard Committee, request
16 additional information from the Commission. The Commission, within
17 thirty (30) days after receiving such request, shall furnish supplemental
18 report containing additional information as requested.

19 Immediately thereafter, the President shall furnish Congress a report
20 on the action taken for the imposition of a safeguard measure.

21 If the action taken by the President differs from the recommendation
22 of the General Safeguard Committee, or if the President decides that there

1 is no appropriate or feasible action under this Section, with respect to the
2 domestic industry, the President shall state in detail the reasons for the
3 decision. In either case, the action recommended by the Commission under
4 this Section upon the enactment of a joint resolution of Congress shall take
5 effect within thirty (30) legislative days from the receipt of the document
6 submitted by the President.

7 Except as provided under this Section, any action described in
8 paragraph (a), (b), or (c) shall take effect within fifteen (15) days after the
9 President proclaims the action, unless the President announces, on the day
10 he submits document to Congress, his intention to negotiate one or more
11 agreements described under this Section paragraph (e), in which case the
12 action shall be proclaimed and take effect within ninety (90) days after
13 submission of decision to Congress.

14 (J) Limitations on Actions. – The duration of the period in which
15 an action taken under this Section may be in effect shall not exceed four
16 (4) years. Such period shall include the period, if any, in which provisional
17 relief under this Section was in effect.

18 The effective period of any safeguard measure, including any
19 extensions thereof under Section 5(M) may not, in the aggregate exceed
20 ten (10) years.

21 (I) Any additional duty, or any duty imposed under this Section
22 shall be specific. This is the amount necessary to prevent or compensate

1 for injury to the domestic industry.

2 (2) If a quantitative restriction is used, such measure shall not
3 reduce the quantity of imports below the level of a recent period, which
4 shall be the average of imports in the last three (3) representative years for
5 which statistics are available, unless clear justification is given that a
6 different level is necessary to prevent or remedy serious injury.

7 (3) An action described in Section 5(I)(a), (b), or (c) that has an
8 effective period of more than a year shall be phased down at regular
9 intervals within the period in which the action is in effect.

10 (4) Within two (2) years after the expiration of the action, the
11 Secretary shall not accept any further petition for the same article:
12 *Provided, however,* That a safeguard measure with a duration of one
13 hundred eighty (180) days or less may be applied again to the same article
14 if:

15 (i) At least one (1) year has elapsed since the introduction of the
16 safeguard measure; and

17 (ii) Such measure has not been applied on the same product more
18 than twice in the five (5) year period immediately preceding the date of
19 introduction of the measure.

20 (K) Monitoring. – So long as any action taken under Section 5(I)
21 remains in effect, the Commission shall monitor developments with
22 respect to the domestic industry, including the progress and specific efforts

1 made by workers and firms in the domestic industry to make a positive
2 adjustment to import competition.

3 (1) If the initial application of action taken under Section 5(I)
4 exceeds three (3) years, or if an extension of such action exceeds three (3)
5 years, the Commission shall submit to the President and Congress, a report
6 on the results of the monitoring, not later than the date which is the
7 midpoint of the initial period, and of each such extension, during which the
8 action is in effect.

9 (2) The Commission, in the preparation of each monitoring report,
10 shall conduct a hearing at which interested parties shall be given
11 reasonable opportunity to be present, to present evidence, and to be heard.

12 (L) Reduction, Modification, and Termination of Action. – Action
13 taken under Section 5(I) may be reduced, modified, or terminated by the
14 President only after:

15 (a) Taking into account the results of the monitoring indicated in
16 the report submitted by the Commission under Section 5(K), and upon
17 consultation with the General Safeguard Committee, determines that:

18 (i) No adequate efforts to make a positive adjustment to import
19 competition have been undertaken by the domestic industry; and

20 (ii) Changed economic circumstances have impaired the
21 effectiveness of action taken under Section 5(I)

22 (b) A majority of the representatives of the domestic industry

1 submits to the President, at least one year before the expiration, a petition
2 requesting such reduction, modification, or termination on such basis, that
3 the domestic industry has made a positive adjustment to import
4 competition.

5 (c) If reduction, modification, and termination of action is being
6 requested for an action that is in effect for three (3) years or less, the
7 petitioning industry must submit its request to the Secretary. The Secretary
8 shall then refer the request to the Commission which shall conduct an
9 investigation following the procedures under Section 5(C), to be
10 completed within ninety (90) days from receipt of the request. The
11 Commission then shall submit a report to the General Safeguard
12 Committee, which shall recommend to the President the appropriate action
13 within thirty (30) days from receipt of the report. The President shall then
14 take action after taking into consideration conditions under Section 5(L)
15 (a)(i) and (ii), not later than thirty (30) days after receipt of the
16 recommendation from the General Safeguard Committee.

17 (M) Extension and Re-application of Safeguard Measure.

18 (1) Subject to the review under Section 5(K), an extension of the
19 measure may be requested by the petitioner, the Secretary or the President
20 if the action continues to be necessary to prevent or remedy the serious
21 injury and there is evidence that the domestic industry is making positive
22 adjustment to import competition.

1 (2) The petitioner may appeal to the Secretary at least ninety (90)
2 days before the expiration of the measure for an extension of the period by
3 stating concrete reasons for the need and a description of the industry's
4 adjustment performance and future plan. The Secretary shall immediately
5 refer the request to the Commission. Following the procedures required
6 under Section 7, the Commission shall submit a report to the General
7 Safeguard Committee not later than sixty (60) days from its receipt of the
8 request. The General Safeguard Committee shall then submit to the
9 President a recommendation within the next thirty (30) days.

10 (N) Evaluation of Effectiveness of Action. – After termination of
11 any action under Section 5(I), the Commission shall evaluate the
12 effectiveness of the actions in facilitating positive adjustment by the
13 domestic industry to import competition.

14 The Commission shall hold a public hearing on the effectiveness of
15 the action, at which all interested parties shall be afforded opportunity to
16 present evidence or testimony. A positive adjustment to import
17 competition is deemed to have occurred when:

18 (a) The domestic industry is able to compete successfully with
19 imports after the termination of any safeguard action, or there is an orderly
20 transfer of resources to other productive pursuits; and

21 (b) Dislocated workers in the industry experience an orderly
22 transition to productive pursuits.

1 A report on the evaluation shall be submitted by the Commission to
2 the President and to Congress no later than ninety (90) days after the
3 termination of the action under Section 5(N).

4 SEC. 6. *Special Safeguard Measures.* –

5 (A) Conditions for Application. – The Secretary of Agriculture
6 shall issue a department order requesting the Commissioner of Customs,
7 through the Secretary of Finance, to impose an additional special safeguard
8 duty on an agricultural product, consistent with Philippine international
9 treaty obligations, if:

10 (a) Its cumulative import volume in a given year exceeds its
11 trigger volume, subject to the conditions stated in this Act, in particular
12 Section 6 (C) below; or, but not concurrently,

13 (b) Its actual C.I.F. import price is less than its trigger price
14 subject to the conditions stated in this Act, in particular, Section 6 (D)
15 below.

16 (B) Initiation of Action. – Any person, whether natural or
17 juridical, may request the Secretary to verify if a particular product can be
18 imposed a special safeguard duty subject to the conditions set in Section 5
19 (C-F) of this Act. The request shall include data which would show that
20 the volume of imports of a particular product has exceeded its trigger
21 volume or that the C.I.F. import price of a particular product has gone

1 below its trigger price. The Secretary shall come up with a finding within
2 five (5) working days from the receipt of a request.

3 The Secretary may, *motu proprio*, initiate the imposition of a special
4 safeguard measure following the satisfaction of the condition for imposing
5 the measure set in this Act.

6 (C) Determination of Special Safeguard Duty Based on the
7 Volume Test. – The special safeguard duty allowed to be imposed on an
8 agricultural product on the basis of the volume test pursuant to Section 6
9 (A.a) of this Act shall be determined as follows”

10 (a) The trigger volume referred to in Section 6 (A.a) of this Act is
11 the volume obtained, after adding the change in the annual domestic
12 consumption of the agricultural product under consideration for the two (2)
13 preceding years for which data are available, to:

14 (i) One hundred twenty-five percent (125%) of the average
15 annual volume of imports of the agricultural product under consideration
16 in the three (3) immediately preceding years for which data are available
17 (hereinafter referred to as the average import volume) if the market access
18 opportunity is at most ten percent (10%); or

19 (ii) One hundred ten percent (110%) of the average annual
20 volume, if the market access opportunity is at most thirty percent (30%); or

21 (iii) One hundred five percent (105%) of the average annual
22 volume, if the market access opportunity exceeds thirty percent (30%):

1 *Provided*, That if the change in the volume of domestic
2 consumption mentioned above is not taken into account in computing the
3 trigger volume, the trigger volume is equal to one hundred twenty-five
4 percent (125%) of the average import volume for the immediately
5 preceding three (3) years for which data is available. *Provided, further*,
6 That the trigger volume shall at least be one hundred five percent (105%)
7 of the average imports of the agricultural product under consideration;

8 (b) The special safeguard duty to be imposed subject to the
9 conditions stated under the volume test shall be appropriately set to a level
10 not exceeding one-third (1/3) of the applicable out-quota customs duty on
11 the agricultural product under consideration in the year when it is imposed:
12 *Provided*, That this duty shall only be maintained until the end of the year
13 when it is imposed: *Provided, further*, That this duty may be terminated in
14 special cases under the volume test, such as in times when there is a
15 shortage of a particular agricultural product as determined by the
16 President upon the recommendation of the Secretary: *Provided, finally*,
17 that if Congress fails to act within fifteen (15) days from receipt of notice
18 about the President's action, said action shall be deemed approved.

19 (c) Volumes of imports of the agricultural product under
20 consideration which are en route at the same time the special safeguard
21 duty is imposed shall be exempted from the additional duty. Such volumes

1 shall be counted in the computation of the cumulative volume of imports
2 of the said agricultural product for the following year.

3 (D) Determination of Special Safeguard Duty Based on the Price
4 Test. – The additional duty allowed to be imposed on the basis of the price
5 test pursuant to Section 6(A.b) of this Act shall be determined as follows:

6 (a) The trigger price referred to in Section 6(A.b) of this Act is the
7 average annual C.I.F. import price or relevant reference price of the
8 agricultural product under consideration from 1986 to 1988. The
9 Secretary shall publish the list of trigger prices corresponding to each of
10 the agricultural product covered by this Act, after the conduct of public
11 hearings on the subject.

12 (b) The special safeguard duty to be imposed subject to the
13 conditions stated under this Section of this Act shall be computed as
14 follows:

15 i) Zero, if the price difference is at most ten percent (10%) of the
16 trigger price; or

17 ii) Thirty percent (30%) of the amount by which the price difference
18 exceeds ten percent (10%) of the trigger price, if the said difference
19 exceeds ten percent (10%) but is at most forty percent (40%) of the trigger
20 price; or

21 iii) Fifty percent (50%) of the amount by which the price difference
22 exceeds forty percent (40%) of the trigger price, plus the additional duty

1 imposed under Section 6(D.b.ii), if the said difference exceeds forty
2 percent (40%) but is at most sixty percent (60%) of the trigger price; or

3 iv) Seventy percent (70%) of the amount by which the price
4 difference exceeds sixty percent (60%) of the trigger price, plus the
5 additional duties imposed under Section 6(D.b.ii) and (D.b.iii), if the said
6 difference exceeds sixty percent (60%) but is at most seventy-five percent
7 (75%) of the trigger price; or

8 v) Ninety percent (90%) of the amount by which the price
9 difference exceeds seventy-five percent (75%) of the trigger price, plus the
10 additional duties imposed under Section 6(D.b.ii), (D.b.iii) and (D.b.iv), if
11 the said difference exceeds seventy-five percent (75%) of the trigger price.

12 As far as practicable, a special safeguard measure determined under
13 the provision of this Section shall not be resorted to when the volume of
14 the imported agricultural product under consideration is declining.

15 (E) Agricultural Products Subject to Minimum Access Volume
16 (MAV) Commitments. – The special safeguard duty shall not apply to the
17 volumes of the imported agricultural product under consideration that are
18 brought into the country under the MAV mechanism: *Provided, however,*
19 That these volumes shall be included in the computation of the cumulative
20 volume of imports of the said agricultural product pursuant to Section 6
21 (A.a) of this Act.

1 (F) Perishable and Seasonal Agricultural Products. – Shorter time
2 periods and different prices may be used in determining the applicable
3 special safeguard measure, taking into account the special characteristics
4 of perishable and seasonal agricultural imports.

5 (G) Prohibition of Concurrent Recourse to the General Safeguard
6 Measure. – There shall be no recourse to this special safeguard measure
7 concurrently with the general safeguard measures as provided for under
8 this Act.

9 SEC. 7. *Administrative Support.* – Upon the effectivity of this Act,
10 the Department of Trade and Industry, the Department of Agriculture and
11 the Tariff Commission shall ensure the efficient and effective
12 implementation of this Act.

13 The Secretary of Agriculture shall create a special unit to monitor
14 the volumes and C.I.F. import prices of imported products covered by this
15 Act, and to determine whether the volume of C.I.F. import price of a
16 particular product has exceeded its respective trigger levels at any given
17 period. The Unit shall notify the Secretary whenever an agricultural
18 product can be imposed a special safeguard duty subject to the conditions
19 of this Act. Fifty percent (50%) of safeguard duties collected shall be
20 earmarked for the strengthening of the capabilities of the Departments of
21 Trade and Industry and Agriculture and the Tariff Commission to
22 undertake their responsibilities under this Act. The remaining fifty percent

1 (50%) shall be utilized for competitiveness enhancement measures for the
2 industry affected by the import surge.

3 SEC. 8. *Penalty Clause.* – Any government official or employee
4 who willfully and deliberately fails to investigate, initiate and implement
5 necessary action as provided in this Act and the rules and regulations
6 issued pursuant hereto shall be guilty of gross neglect of duty and in
7 addition shall be subject to dismissal from office and absolute
8 disqualification from public service.

9 SEC. 9. *Oversight.* – There shall be a Congressional Oversight
10 Committee composed of the Chairmen of the Committee on Trade and
11 Industry of both the Senate and the House of Representatives, and
12 Members from the Committee on Agriculture as designated in both
13 chambers, to oversee the implementation of this Act.

14 SEC. 10. *Implementing Rules and Regulations.* – An inter-agency
15 committee to be composed of the secretaries of the Departments of Trade
16 and Industry, Agriculture, Finance, Budget and Management, Labor and
17 Employment, Science and Technology, the Commissioner of the Bureau of
18 Customs and the Chairman of the Tariff Commission, after consultations
19 with domestic industries and with the approval of the Congressional
20 Oversight Committee created under this Act, shall promulgate all rules and
21 regulations necessary to carry out their respective functions within ninety
22 (90) days from the enactment of this Act.

1 SEC. 11. *Judicial Review.* – Any interested party in the
2 investigation stipulated hereof, whose petition is dismissed or who is
3 adversely affected by a ruling in connection with the imposition of a
4 safeguard measure, may file with the Court of Tax Appeals, a petition for
5 review of such ruling within thirty (30) days from receipt of notice of the
6 final ruling: *Provided, however,* that the filing of such petition for review
7 shall not in any way stop, suspend, or otherwise hold the imposition of a
8 safeguard measure.

9 SEC. 12. *Separability Clause.* – If any provision of this Act is
10 declared void or unconstitutional, the remaining provision thereof not
11 affected thereby shall remain in full force and effect.

12 SEC. 13. *Repealing Clause.* – All laws, presidential decrees,
13 executive orders, issuances, and rules and regulations which are
14 inconsistent with this Act are hereby repealed or amended accordingly.
15 However, Section 109 of Republic Act No. 8435 shall remain in full force
16 and effect.

17 SEC. 14. *Effectivity.* – This Act shall take effect fifteen (15) days
18 after its publication in two (2) newspapers of general circulation.

Approved,

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