

Chapter VII

TARIFF AND CUSTOMS DUTIES

A. IMPORT DUTIES

1. Ordinary Import Duties

Tariff duties are levied on imported goods either as a revenue generating measure or a protective scheme to artificially or temporarily inflate prices to support the local industries of a particular country and protect its domestic output from their foreign counterparts. In the Philippines, import duties are imposed, generally in ad valorem form, on articles entering the country in accordance with their corresponding schedules and classifications as provided under Section 104 of the Tariff and Customs Code of the Philippines (TCCP) of 1978, as amended. With the exception of certain articles which can be imported duty-free, upon compliance with certain prescribed conditions or formalities³¹⁷, goods are levied import duties depending on the trade agreements, regional groupings, among others.

As per the TCCP, the rate of duty classification can either be “Most Favoured Nation” or MFN or ASEAN Trade in Goods Agreement (ATIGA). Under the MFN treatment,³¹⁸ the rate of duty ranges from Free/Zero to 30% except in cases of sensitive agricultural

³¹⁷ Section 105 (Conditionally-Free Importations), TCCP, as amended.

³¹⁸ It is the basic Philippine rate of duty applicable to imports coming from non-ASEAN Members.

products which are accorded a certain degree of protection via higher tariff rates reaching to as high as 65%³¹⁹. On the other hand, under the ATIGA³²⁰, Member States agreed to place 99% of all the products in their Inclusion List (IL) at zero-duty. In compliance with ATIGA, the Philippines implemented its tariff commitments, the last tranche of which was made via Executive Order (EO) No. 850 (implemented on January 1, 2010)³²¹. Thus, most goods from the ASEAN are levied ordinary import duties of 0%³²².

³¹⁹ The 65% rate of duty is levied on out-quota importations of cane sugar under Subheading 1701.13 and certain other tariff lines under the Hdg. No. 1701. Subheading 1701.13 shall cover only cane sugar obtained without centrifugation, whose content of sucrose by weight, in the dry state, corresponds to a polarimeter reading of 69° or more but less than 93°. The said product contains only natural anhydrous microcrystals, of irregular shape, not visible to the naked eye, which are surrounded by residues of molasses and other constituents of sugar cane. The Tariff and Customs Code of the Philippines (TCCP), as Amended ASEAN Harmonized Tariff Nomenclature (AHTN) 2012 has indicated that the 65% duty for the said goods will be in force until 2015. However, as per verification from the Tariff Commission, there are no recent issuances as to the modifications in the rates. Hence, the 65% rate of duty for the said goods shall remain in force and effect until further modifications.

³²⁰ ATIGA is an improvement over the CEPT (Common Effective Preferential Tariff Scheme) – AFTA. It consolidates ASEAN's existing initiatives, obligations and commitments made with regard to both Trade in Goods (tariffs) and non-tariff elements (e.g. trade disciplines on Sanitary and Phytosanitary (SPS) measures, customs procedures, and trade facilitations), among others into one comprehensive agreement. It includes an effective tariff preferential to ASEAN, to be applied to goods originating from ASEAN Member States (i.e., Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand, and Vietnam).

³²¹ Member States of the ASEAN have agreed to maintain certain tariffs on selected items that make up their Sensitive/Highly Sensitive Lists which are subject to as high as 35% tariff duties. The 40% rate of duty is effective until 2014 and will go down to 35% until 2015 (e.g. rice under Hdg. No. 10.06). As per verification from the Tariff Commission, the 35% rate remains in force and effect for 2016 or until further modifications.

³²² Member States shall eliminate import duties on all products traded between the Member States by 2010 for ASEAN-6 (Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, and Thailand) except those products where Member States invoked the protocol for special consideration, e.g. Philippines for some sugar products to be reduced to 28% in 2012, and will be further reduced to 18%, 10%, and 5% in 2013, 2014, and 2015, respectively, (EO 892 issued on June 17, 2010); and by 2015, with flexibility to 2018, for Cambodia, Lao PDR, Myanmar, and Vietnam (Article 19, ATIGA).

The President, upon recommendation of the National Economic and Development Authority (NEDA), in the interest of national economy, general welfare, and/or national security, is empowered to increase, reduce, or remove existing protective tariff rates (including any necessary change in classification) but in no case shall the increased rate of duty be higher than a maximum of one hundred (100) per cent ad valorem; establish import quota and/or ban importation of any commodity, as may be necessary; and impose an additional duty on all imports not exceeding ten (10) per cent ad valorem³²³ whenever necessary. The President may also gradually reduce the said protection levels upon periodic investigations by the Tariff Commission (TC) and as recommended by the NEDA.

1. Special Duties

These are levied in addition to the ordinary import duties, taxes and charges imposed by law on the imported product under the following circumstances:

a. Anti-Dumping Duty³²⁴

The anti-dumping duty is a trade remedy measure adopted by the government to protect a domestic industry against the unfair trade practice of dumping.³²⁵ It is a special duty imposed in the event that a specific kind or class (any product, commodity, or article of commerce) of foreign article,

³²³ Section 401 (Flexible Clause), TCCP, as amended.

³²⁴ Provided under RA 8752 (August 12, 1999) Entitled, “An Act Providing the Rules for the Imposition of an Anti-Dumping Duty, Amending for the Purpose Section 301, Part 2, Title II, Book I of the Tariff and Customs Code of the Philippines, as amended by RA 7843, and for Other Purposes”.

³²⁵ “Anti-Dumping Measures: Primer,” Tariff Commission, viewed April 5, 2016, <https://drive.google.com/file/d/0B6XF3AhfubONTUpWOUU1WnpZVjg/view?pref=2&pli=1>.

is being imported into, sold or is likely to be sold in the Philippines, at an export price less than its normal value in the ordinary course of trade for a like product, commodity or article destined for consumption in the exporting country which is causing or threatening to cause material injury to a domestic industry, or materially retarding the establishment of a domestic industry producing similar product.

This duty is imposed by the Secretary of Trade and Industry, in the case of non-agricultural products, commodities or articles, or the Secretary of Agriculture, in the case of agricultural products, commodities or articles, after formal investigation and affirmative finding of the Tariff Commission of the said act. The duty is equal to the margin of dumping on such product, commodity or article and on like product, commodity or article thereafter imported into the Philippines under similar circumstances. However, the duty may be charged less than the margin of dumping if the said lesser duty is adequate to remove the injury to the local industry. The decision as to whether or not to impose a definitive anti-dumping duty even when the requirements for the imposition are met/fulfilled will remain the prerogative of the TC. It may take into consideration, among others, the effect of imposing an anti-dumping duty on the welfare of consumers and/or the general public, and other related local industries.

b. Countervailing Duty ³²⁶

The countervailing duty is a special duty charged whenever any product, commodity or article of commerce is granted directly or indirectly by the government in the country

³²⁶ Provided under RA 8751 (August 7, 1999) Entitled, “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 (PD) No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, As Amended”.

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.

After formal investigation and affirmative finding by the Tariff Commission of such threat, the countervailing duty which is equal to the ascertained amount of the subsidy, may be imposed by the Secretary of Trade and Industry, in the case of non-agricultural products, commodities or articles, or the Secretary of Agriculture, in the case of agricultural products, commodities or articles on like product, commodity or article thereafter imported into the Philippines.

c. Marking Duty ³²⁷

The marking of articles (or its containers) is a prerequisite for every article or container of foreign origin which is imported into the Philippines in accordance with Section 303 of the TCCP. The marking shall be done in any official language of the Philippines and in a conspicuous place as legibly, indelibly and permanently as the nature of article (or container) may permit to indicate to an ultimate purchaser in the Philippines the country of origin of the article.

In case of failure to mark an article or its container at the time of importation, unless otherwise excepted³²⁸ from the requirements of marking, there shall be levied upon such article a marking duty of 5% ad valorem.

³²⁷ Section 303, TCC, as amended.

³²⁸ Section 303(a)(3), TCC, as amended.

d. Discriminatory Duty³²⁹

As stipulated under Section 304 of the TCCP, the discriminatory duty is a new or additional duty in an amount not exceeding 100% ad valorem, imposed by the President by proclamation upon articles of a foreign country which discriminates against Philippine commerce or against goods coming from the Philippines in such manner as to place the commerce of the Philippines at a disadvantage compared with the commerce of any foreign country.

e. General Safeguard Measure³³⁰

A general safeguard measure is applied by the Secretary of Trade and Industry (for non-agricultural products) or the Secretary of Agriculture (for agricultural products) upon positive final determination of the Tariff Commission that a product is being imported into the country in increased quantities, whether absolute or relative to domestic production, as to cause or threaten to cause serious injury to the domestic industry. In the case of non-agricultural products, however, the Secretary of Trade and Industry shall first establish that the application of such safeguard measures will be in the public interest.

Upon positive determination, the Tariff Commission shall recommend to the concerned Secretary an appropriate definitive measure, in the form of:

- (1) An increase in, or imposition of, any duty on the imported product;

³²⁹ Section 304, TCC, as amended.

³³⁰ Provided under RA 8800 (July 17, 2000) Entitled, “An Act Protecting Local Industries by Providing Safeguard Measures to be Undertaken in Response to Increased Imports and Providing Penalties for Violations Thereof.”

- (2) A decrease in or the imposition of a tariff-rate quota (Minimum Access Volume) on the product;
- (3) A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;
- (4) One or more appropriate adjustment measures, including the provision of trade adjustment assistance; and
- (5) Any combination of actions described in subparagraphs (1) to (4).

The general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustments by the domestic industry from the adverse effects directly attributed to the increased imports. However, the law provides that when quantitative import restrictions are used, such measures shall not reduce the quantity of imports below the average imports for the three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy a serious injury.

A general safeguard measure shall not be applied to a product originating from a developing country, if that country's share of total imports of the product is less than three percent (3%), provided that developing countries with less than three percent (3%) share collectively account for not more than nine percent (9%) of total imports. The decision imposing a general safeguard measure, the duration of which is more than one (1) year, shall be reviewed at regular intervals for purposes of liberalizing or reducing its intensity.

In case where the definitive safeguard measure is in the form of a tariff increase, the increase shall not be subject or limited to the maximum levels of tariff as provided under Section 401(a) of the TCCP.

f. Special Safeguard Duty³³¹

An additional special safeguard duty is imposed on an agricultural product, consistent with Philippine international treaty obligations, whenever the cumulative import volume in a given year exceeds its trigger volume and when the actual c.i.f. (Cost, Insurance and Freight) import price falls below its trigger price. The special safeguard duty is imposed by the Commissioner of Customs, through the Secretary of Finance, upon request by the Secretary of Agriculture.

***Special Duty Based on the Volume Test*³³²**

The special safeguard duty to be imposed under the volume test shall be equivalent to not exceeding one-third (1/3) of the applicable out-quota customs duty on the agricultural product under consideration in the year when it is imposed. The said duty may only be maintained until the end of the year in which it is imposed and may be reduced or terminated in special cases such as when a shortage of a particular agricultural product exists, as determined by the Secretary of Agriculture. The special safeguard duty shall be determined as follows:

The trigger volume is the amount obtained, after adding the change in the annual domestic consumption of the agricultural product under consideration, for the two (2) preceding years, to:

- (i) One hundred twenty-five percent (125%) of the average annual volume of imports of the agricultural product under consideration in the three (3) immediately preceding years for which data are available, if the market access opportunity is at most ten percent (10%); or
- (ii) One hundred ten percent (110%) of the average annual import volume, if the market access opportunity exceeds

³³¹ Ibid.

³³² Section 23 of RA 8800.

ten percent (10%) but not more than thirty percent (30%);
or

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

If the change in the volume of domestic consumption is not taken into consideration in computing the trigger volume, the trigger volume shall be equal to one hundred twenty-five (125%) of the average import volume for the immediate three (3) preceding years, unless it is justified that a different level is necessary to prevent or remedy the serious injury.

Special Safeguard Duty Based on the Price Test ³³³

The special safeguard duty on the basis of the price test shall be determined as follows:

The trigger price is the average actual c.i.f. import price or relevant reference price of the agricultural product under consideration from 1986 to 1988, unless clear justification is given that a different reference price is necessary to prevent or remedy serious injury. The Secretary of Agriculture shall publish the list of trigger prices corresponding to each of the agricultural products after the conduct of public hearings on the subject. The special safeguard duty to be imposed based on the price test shall computed as follows:

- (i) Zero, if the price difference is at most ten percent (10%) of the trigger price; or
- (ii) Thirty percent (30%) of the amount by which the price difference exceeds ten percent (10%) of the trigger price,

³³³ Section 24 of RA 8800.

if the said difference exceeds ten percent (10%) but is at most forty (40%) of the trigger price; or

- (iii) Fifty percent (50%) of the amount by which the price difference exceeds forty percent (40%) of the trigger price, plus the additional duty imposed under (ii), if the said difference exceeds forty percent (40%) but is at most sixty percent (60%) of the trigger price; or
- (iv) Seventy percent (70%) of the amount by which the price difference exceeds sixty percent (60%) of the trigger price, plus additional duties under (ii) and (iii), if the said difference exceeds sixty percent (60%) and is at most seventy-five percent (75%) of the trigger price; or
- (v) Ninety percent (90%) of the amount by which the price difference exceeds seventy-five percent (75%) of the trigger price; plus the additional duties imposed under (ii), (iii), and (iv), if the said difference exceeds seventy-five percent (75%) of the trigger price.

The said special safeguard measure shall not be resorted to when the volume of the imported agricultural product under consideration is declining.

B. EXPORT DUTIES

Logs are the only remaining products subject to the duty under Section 514 of the TCCP, as amended. The export duty imposed on logs is 20% of the gross Free on Board (F.O.B.) value at the time of shipment based on the prevailing rate of exchange. However, only planted trees are subject to the export duty, since all naturally grown trees are banned from being exported under Ministry of Environment and Natural Resources Memorandum Order No. 8 (issued June 20, 1986).

