

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

**EIGHTEENTH CONGRESS
First Regular Session**

House Bill No. 4462



Introduced by Hon. **RONNIE L. ONG**

EXPLANATORY NOTE

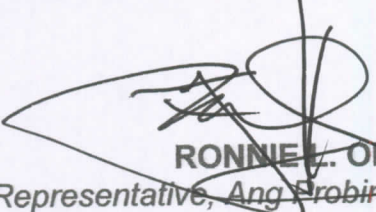
The issue on excessive and questionable destination and other shipping charges, including container deposits, demurrage and detention charges, has been dragging on for many years. Time and again, it has impeded Philippine trade and commerce, stifled competition and transparency, resulted to nationwide inflation and revenue loss to government and unduly burdened Filipino consumers, port users and businesses. This perennial issue is also a big challenge to our collective vision for a comfortable and secure life for all.

Despite being an important national concern and despite our neighboring countries already issuing regulations on similar problems, the same, however, has not been squarely addressed by the Philippine government. The cry of consumers, port users and businesses has fallen on deaf ears despite them strongly pushing for the issuance of a Joint Administrative Order or an Executive Order in the past. The government inaction can be attributed to the jurisdictional problem- no agency of government is owning up to the responsibility of addressing the high international shipping costs.

This bill aims to address this glaring gap, stop the blame game and ensure the welfare of our consumers who have already suffered long enough. This bill mandates the Maritime Industry Authority (MARINA) to be true to its mandate under Presidential Decree No. 474 and Executive Orders No. 125 and 125-A, both series of 1987, especially in terms of determining, fixing and prescribing charges pertinent to the operation of public water transport utilities, facilities and services except when rates are established by international bodies and, as included and emphasized in this bill, by free market forces.

Under this bill, MARINA is given various ways to promote fair and transparent destination and other shipping charges among forwarders and agents of international shipping lines. The DTI, PCC, BOC and BIR, among others, are also called to assist MARINA in facilitating competition, commerce and honest revenue collection. The goal is to protect our consumers once and for all in a fair and transparent manner while also making sure that operations of international shipping lines and, more importantly, international trade, will also not be unduly hampered.

In view of the foregoing, immediate approval of this bill is immediately sought.


RONNIE L. ONG
Representative, Ang Probinsyano Party-list

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**AN ACT MANDATING THE MARITIME INDUSTRY AUTHORITY TO PROMOTE FAIR
AND TRANSPARENT DESTINATION AND OTHER SHIPPING CHARGES AMONG
FORWARDERS AND AGENTS OF INTERNATIONAL SHIPPING LINES**

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

Section 1. Short Title. This Act shall be known as the "Fair and Transparent Destination and Other Shipping Charges Act."

SEC. 2. Declaration of Policy. It is the policy of the State to promote the general welfare of its citizens and enhance the competitiveness and development of the Philippine trade and commerce. The State also recognizes the indispensable role of the private sector and the need to encourage private enterprise.

Towards this end, the State shall address the high international shipping costs impeding commerce, resulting to nationwide inflation and unduly burdening Filipino consumers, port users and businesses, by promoting fare and transparent destination and other shipping charges among forwarders and agents of international shipping lines.

SEC. 3. Fair and Transparent Destination and Other Shipping Charges. The Maritime Industry Authority (MARINA) shall supervise the rate-fixing mechanism of forwarders and agents of international shipping lines and shall ensure fair and transparent destination and other shipping charges through the following:

- 1) **Information Portal.** MARINA, in coordination with the Department of Trade and Industry (DTI) and other concerned agencies and stakeholders, shall establish an information portal as a mechanism for publishing and monitoring the daily all-in freight charges per route and allowable destination and other shipping charges, imposed by international shipping lines, their forwarders and agents, and for disseminating shipping cost information to shippers and consignees.

For purposes of this Act, MARINA shall not regulate and shall accord due respect to the imposition by international shipping lines of freight charges as dictated by free market forces and to negotiations, collections or modes of transaction between sellers and buyers incorporating the widely-used International Commercial Terms (INCOTERMS) and any subsequent update or revision thereto.

- 2) ***Allowable Destination and Other Shipping Charges.*** MARINA shall not allow the imposition of destination and other shipping charges by forwarders and agents of international shipping lines not included in freight charges or freight quotations unless:

- a. Covered by a contractual arrangement between the forwarder and agent of the international shipping line and the shipper or consignee; and
- b. MARINA passes upon the reasonability or legitimacy of the said charge after a public hearing is done where applicant forwarders and agents of international shipping lines are required to justify the collection of any destination charge apart from the freight charge and to clarify its nature and the service rendered in exchange of such charge.

In addition, MARINA may also set a reasonable cap on the charge to be imposed by forwarders and agents of international shipping lines.

These destination and other shipping charges include fees such as, but not limited to, Terminal Handling Cost, Emergency Cost Recovery Charge, Container Imbalance Charge, Bunker Price Adjustment, Foreign Currency Adjustment, Document Fee, Container Cleaning Fee, etc. or their variations.

- 3) ***Container Deposits.*** On Container Deposits, which is in the nature of funds entrusted to forwarders and agents of international shipping lines for safekeeping to be refunded upon the return of the container, MARINA shall prohibit the imposition of the same on shippers or consignees who have paid the necessary container insurance and have given company guarantee for the return of the containers.

In other cases, MARINA may allow the imposition of Container Deposits, and set a reasonable cap therefor, only if:

- a) the forwarders and agents of international shipping lines implement an expeditious procedure in refunding the same within a non-extendible period of fifteen (15) days;
- b) there are clear and fair standards for deductions made known by such forwarders and agents to the other party prior to engagement; and
- c) there is actual proof given before any deduction is made.

- 4) ***Demurrage and Detention Charges.*** On Demurrage and Detention Charges, MARINA shall allow cost recovery by forwarders and agents of shipping lines based on actual lease cost per day beyond the allowable free time granted by shipping lines, subject to the following conditions:

- a) The accumulated charges shall not exceed the actual value of the container; and
- b) Any demurrage or detention charge shall not constitute a direct or indirect lien on container deposits or on other cargos or shipments covered by a separate transaction even with the same shipper or consignee.

- 5) ***Education Campaign.*** MARINA and DTI, in coordination with private stakeholders, shall develop a program to educate all Philippine shippers and consignees on how to negotiate using the INCOTERMS, the freight, destination

and other shipping charges imposed by forwarders and agents of international shipping lines, the best practices to manage or control the supply chain and updates in the implementation of this Act.

SEC. 4. Assistance of Other Government Agencies. Aside from the assistance of DTI as mentioned in the preceding Section, the following agencies shall assist MARINA in promoting fair and transparent destination and other shipping charges and facilitating competition, commerce and honest revenue collection:

- 1) The Philippine Competition Commission (PCC) shall continue to investigate cases of excessive pricing, coercion or payments of any charge under duress and other possible violations of competition laws and regulations. The PCC shall also coordinate with MARINA in the implementation of competition policies in the maritime trade sector.
- 2) The Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR) shall study the impact of imposition of destination and other shipping charges to their revenue collections and shall investigate or determine liabilities arising from any underdeclaration by or non-payment of any duty or tax due from international shipping lines and their forwarders and agents.

The BOC shall also study and recommend, for MARINA's approval, the possibility of suspending the application of demurrage or detention charges if international shipping lines, their forwarders and agents fail to provide adequate container yard space.

In addition, the BOC and MARINA may establish a one-stop shop or satellite office inside the customs premises, housing all representatives of international shipping lines, their forwarders and agents, for easier coordination in the implementation of this Act.

SEC. 5. Penalties. After due notice and hearing, MARINA may impose the following schedule of administrative fines on any forwarders and agents of international shipping lines found to have violated this Act:

First offense: Fine of up to five hundred thousand pesos (PhP500,000.00);

Second offense: Fine of not less than five hundred pesos (PhP500,000.00) but not more than one million pesos (PhP1,000,000.00).

Third offense: Fine of not less than one million pesos (PhP1,000,000.00) but not more than five million pesos (P5,000,000.00). In addition, MARINA, in coordination with DTI, shall also cause the cancellation of the accreditation and/or the blacklisting of the said forwarder, agent or shipping line.

In fixing the amount of the fine, MARINA shall have regard to both the gravity and the duration of the violation. MARINA shall also have the power to increase the said fines every five (5) years to maintain their real value.

The foregoing liabilities shall be without prejudice to the filing of a criminal, civil or administrative case pursuant to existing laws, rules and regulations.

SEC. 6. Implementing Rules and Regulations. The MARINA, in coordination with DTI, BOC, PCC, BIR and other concerned agencies and private stakeholders, shall formulate the implementing rules and regulations within ninety (90) days after the effectivity of this Act.

SEC. 7. *Suppletory Application.* Presidential Decree No. 474, Executive Order Nos. 125 and 125-A, s. 1987, Republic Act No. 7394 or the Consumer Act of the Philippines, Republic Act No. 10863 or the Customs Modernization and Tariff Act, Republic Act No. 10667 or the Philippine Competition Act and all other applicable laws, rules and regulations shall have suppletory application in cases not provided for under this Act.

SEC. 8. *Separability Clause.* If any provision or part hereof is held invalid or unconstitutional, the remaining provisions not affected thereby shall remain valid and subsisting.

SEC. 9. *Repealing Clause.* Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 10. *Effectivity.* This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in any two (2) newspapers of general circulation in the Philippines.

Approved,