

ELEVENTH CONGRESS OF THE }  
REPUBLIC OF THE PHILIPPINES }  
Third Regular Session }

'00 OCT 25 A9:17

SENATE

RECEIVED BY: 

COMMITTEE REPORT NO. 439

Submitted by the Committee on Ways and Means on 25 OCT 2000

Re : S.B. No. 2196

Recommending its approval in substitution of H. No. 8623

Sponsor : Senator Enrile

Mr. President :

The Committee on Ways and Means to which was referred H. No. 8623, introduced by Congressmen Teves, Roxas II, Belmonte, Jr., Punzalan, Jr., Suarez, et., al., entitled :

**"AN ACT  
AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1464,  
OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE  
PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES"**

has considered the same and has the honor to report it back to the Senate with the recommendation that the attached S.B. No. 2196, prepared by the Committee, entitled:

**"AN ACT  
AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1464,  
OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE  
PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES"**

be approved in substitution of HB No. 8623 with Senator Enrile as author thereof.

Respectfully submitted:

  
JUAN PONCE ENRILE

Chairman

Vice-Chairmen:

JOHN H. OSMEÑA

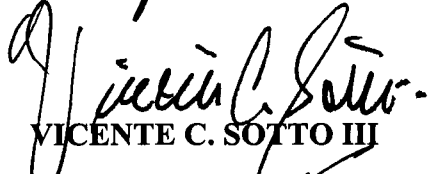
  
GREGORIO B. HONASAN

**Members:**



**RAMON B. REVILLA**

**ROBERT Z. BARBERS**



**VICENTE C. SOTTO III**



**ROBERT S. JAWORSKI**



**ANNA DOMINIQUE M.L. COSETENG**



**TERESA AQUINO-ORETA**



**RAMON B. MAGSAYSAY, JR.**

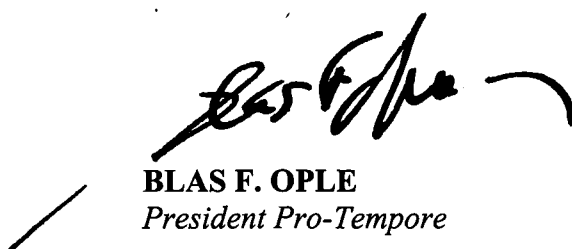


**JUAN M. FLAVIER**



**LOREN LEGARDA-LEVISTE**

**Ex-Officio Members:**



**BLAS F. OPLE**  
*President Pro-Tempore*



**FRANCISCO S. TATAD**  
*Majority Leader*



**TEOFISTO T. GUINGONA, JR.**  
*Minority Leader*

**HON. FRANKLIN M. DRILON**  
*Senate President*

ELEVENTH CONGRESS OF THE }  
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SENATE

S. No. **2196**

(In Substitution of H.No. 8623)

RECEIVED BY: 

Prepared by the Committee on Ways and Means with Senator Enrile as author thereof

**AN ACT**

**AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1464,  
OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE  
PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES**

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

SECTION 1. Section 201 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. 201. Basis of Dutiable Value. – (A) METHOD ONE.  
TRANSACTION VALUE. – The dutiable value of an imported article subject to  
an *ad valorem* rate of duty shall be the transaction value, which shall be the price  
actually paid or payable for the goods when sold for export to the Philippines,  
adjusted by adding:

(1) [t]The following to the extent that they are incurred by the buyer but are  
not included in the price actually paid or payable for the imported goods:

(a) Commissions and brokerage fees (except buying commissions);

(b) [c]Cost of containers; [and]

(c) [t]The cost OF packing[;], whether for labo[u]r or materials;

[ (b) ] (d) The value, [for] APPORTIONED AS APPROPRIATE, OF  
THE FOLLOWING GOODS AND SERVICES, WHERE SUCH GOODS  
AND SERVICES ARE SUPPLIED DIRECTLY OR INDIRECTLY BY  
THE BUYER FREE OF CHARGE OR AT A REDUCED COST FOR  
USE IN CONNECTION WITH THE PRODUCTION AND SALE FOR  
EXPORT OF THE IMPORTED GOODS:

(i) materials, components, parts and SIMILAR items incorporated in the  
imported goods;

(ii) tools, dies, moulds and similar items used in the production of the  
imported goods;

(iii) materials consumed in the production of the imported goods; and

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Philippines [and] necessary for the production of imported goods [, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods; to the extent that such value has not been included in the price actually paid or payable];

[ (c) ] (e) The amount of royalties and license fees RELATED TO THE GOODS BEING VALUED that the buyer must pay, either directly or indirectly, [in connection with the goods being valued,] as a condition of sale of the goods to the buyer;

[ (d) ] (2) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

[ (e) ] (3) The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;

[ (f) ] (4) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and

[ (g) ] (5) The cost of insurance.

ALL ADDITIONS TO THE PRICE ACTUALLY PAID OR PAYABLE SHALL BE MADE ONLY ON THE BASIS OF OBJECTIVE AND QUANTIFIABLE DATA.

NO ADDITIONS SHALL BE MADE TO THE PRICE ACTUALLY PAID OR PAYABLE IN DETERMINING THE CUSTOMS VALUE EXCEPT AS PROVIDED IN THIS SECTION.

METHOD ONE SHALL NOT BE USED IN DETERMINING THE DUTIABLE VALUE OF IMPORTED GOODS IF:

(1) THERE ARE RESTRICTIONS AS TO THE DISPOSITION OR USE OF THE GOODS BY THE BUYER OTHER THAN RESTRICTIONS WHICH:

(a) ARE IMPOSED OR REQUIRED BY LAW OR BY PHILIPPINE AUTHORITIES;

(b) LIMIT THE GEOGRAPHICAL AREA IN WHICH THE GOODS MAY BE RESOLD; OR

(c) DO NOT SUBSTANTIALLY AFFECT THE VALUE OF THE GOODS.

- 1 (2) THE SALE OR PRICE IS SUBJECT TO SOME CONDITION OR  
 2 CONSIDERATION FOR WHICH A VALUE CANNOT BE DETERMINED  
 3 WITH RESPECT TO THE GOODS BEING VALUED;
- 4 (3) PART OF THE PROCEEDS OF ANY SUBSEQUENT RESALE,  
 5 DISPOSAL OR USE OF THE GOODS BY THE BUYER WILL ACCRUE  
 6 DIRECTLY OR INDIRECTLY TO THE SELLER, UNLESS AN  
 7 APPROPRIATE ADJUSTMENT CAN BE MADE IN ACCORDANCE  
 8 WITH THE PROVISIONS HEREOF; OR
- 9 (4) THE BUYER AND THE SELLER ARE RELATED TO ONE ANOTHER,  
 10 AND SUCH RELATIONSHIP HAS INFLUENCED THE PRICE OF THE  
 11 GOODS. SUCH PERSONS SHALL BE DEEMED RELATED IF:
- 12 (a) THEY ARE OFFICERS OR DIRECTORS OF ONE ANOTHER'S  
 13 BUSINESSES;
- 14 (b) THEY ARE LEGALLY RECOGNIZED PARTNERS IN BUSINESS;
- 15 (c) THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP  
 16 BETWEEN THEM;
- 17 (d) ANY PERSON DIRECTLY OR INDIRECTLY OWNS, CONTROLS  
 18 OR HOLDS FIVE PERCENT (5%) OR MORE OF THE  
 19 OUTSTANDING VOTING STOCK OR SHARES OF BOTH SELLER  
 20 AND BUYER;
- 21 (e) ONE OF THEM DIRECTLY OR INDIRECTLY CONTROLS THE  
 22 OTHER;
- 23 (f) BOTH OF THEM ARE DIRECTLY OR INDIRECTLY  
 24 CONTROLLED BY A THIRD PERSON;
- 25 (g) TOGETHER THEY DIRECTLY OR INDIRECTLY CONTROL A  
 26 THIRD PERSON; OR
- 27 (h) THEY ARE MEMBERS OF THE SAME FAMILY, INCLUDING  
 28 THOSE RELATED BY AFFINITY OR CONSAGUINITY UP TO THE  
 29 FOURTH CIVIL DEGREE.

30 PERSONS WHO ARE ASSOCIATED IN BUSINESS WITH  
 31 ONE ANOTHER SUCH THAT ONE IS THE SOLE AGENT, SOLE  
 32 DISTRIBUTOR OR SOLE CONCESSIONAIRE, HOWEVER  
 33 DESCRIBED, OF THE OTHER, SHALL BE DEEMED TO BE  
 34 RELATED FOR THE PURPOSES OF THIS ACT IF THEY FALL  
 35 WITHIN ANY OF THE EIGHT (8) CASES ABOVE.

36 (B) METHOD TWO. TRANSACTION VALUE OF IDENTICAL  
 37 GOODS. – WHERE THE DUTIABLE VALUE CANNOT BE DETERMINED  
 38 UNDER METHOD ONE, THE DUTIABLE VALUE SHALL BE THE

1 TRANSACTION VALUE OF IDENTICAL GOODS SOLD FOR EXPORT TO  
2 THE PHILIPPINES AND EXPORTED AT OR ABOUT THE SAME TIME AS  
3 THE GOODS BEING VALUED. "IDENTICAL GOODS" SHALL MEAN  
4 GOODS WHICH ARE THE SAME IN ALL RESPECTS, INCLUDING  
5 PHYSICAL CHARACTERISTICS, QUALITY AND REPUTATION. MINOR  
6 DIFFERENCES IN APPEARANCE SHALL NOT PRECLUDE GOODS  
7 OTHERWISE CONFORMING TO THE DEFINITION FROM BEING  
8 REGARDED AS IDENTICAL.

9 (C) METHOD THREE. TRANSACTION VALUE OF SIMILAR  
10 GOODS. - WHERE THE DUTIABLE VALUE CANNOT BE DETERMINED  
11 UNDER THE PRECEDING METHODS, THE DUTIABLE VALUE SHALL BE  
12 THE TRANSACTION VALUE OF SIMILAR GOODS SOLD FOR EXPORT  
13 TO THE PHILIPPINES AND EXPORTED AT OR ABOUT THE SAME TIME  
14 AS THE GOODS BEING VALUED. "SIMILAR GOODS" SHALL MEAN  
15 GOODS WHICH, ALTHOUGH NOT ALIKE IN ALL RESPECTS, HAVE  
16 LIKE CHARACTERISTICS AND LIKE COMPONENT MATERIALS WHICH  
17 ENABLE THEM TO PERFORM THE SAME FUNCTIONS AND TO BE  
18 COMMERCIALY INTERCHANGEABLE. THE QUALITY OF THE  
19 GOODS, THEIR REPUTATION AND THE EXISTENCE OF A TRADEMARK  
20 SHALL BE AMONG THE FACTORS TO BE CONSIDERED IN  
21 DETERMINING WHETHER GOODS ARE SIMILAR.

22 IF THE DUTIABLE VALUE STILL CANNOT BE DETERMINED  
23 THROUGH THE SUCCESSIVE APPLICATION OF THE TWO  
24 IMMEDIATELY PRECEDING METHODS, THE DUTIABLE VALUE SHALL  
25 BE DETERMINED UNDER METHOD FOUR OR, WHEN THE DUTIABLE  
26 VALUE STILL CANNOT BE DETERMINED UNDER THAT METHOD,  
27 UNDER METHOD FIVE. HOWEVER, IF THE IMPORTER SO REQUESTS,  
28 THE ORDER OF APPLICATION OF METHODS FOUR AND FIVE SHALL  
29 BE REVERSED: PROVIDED, HOWEVER, THAT IF THE COMMISSIONER  
30 OF CUSTOMS DEEMS THAT HE WILL EXPERIENCE REAL  
31 DIFFICULTIES IN DETERMINING THE DUTIABLE VALUE USING  
32 METHOD FIVE, THE COMMISSIONER OF CUSTOMS MAY REFUSE  
33 SUCH A REQUEST SUBJECT TO THE PROVISIONS OF PARAGRAPH 3,  
34 ANNEX III OF THE AGREEMENT ON THE IMPLEMENTATION OF  
35 ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE  
36 1994 IN WHICH EVENT THE DUTIABLE VALUE SHALL BE  
37 DETERMINED UNDER METHOD FOUR, IF IT CAN BE SO DETERMINED.

(D) METHOD FOUR. DEDUCTIVE VALUE. – THE DUTIABLE VALUE OF THE IMPORTED GOODS UNDER THIS METHOD SHALL BE THE DEDUCTIVE VALUE WHICH SHALL BE BASED ON THE UNIT PRICE AT WHICH THE IMPORTED GOODS OR IDENTICAL OR SIMILAR IMPORTED GOODS ARE SOLD IN THE PHILIPPINES, IN THE SAME CONDITION AS WHEN IMPORTED, IN THE GREATEST AGGREGATE QUANTITY, AT OR ABOUT THE TIME OF THE IMPORTATION OF THE GOODS BEING VALUED, TO PERSONS NOT RELATED TO THE PERSONS FROM WHOM THEY BUY SUCH GOODS, SUBJECT TO DEDUCTIONS FOR THE FOLLOWING:

- (1) EITHER THE COMMISSIONS USUALLY PAID OR AGREED TO BE PAID OR THE ADDITIONS USUALLY MADE FOR PROFIT AND GENERAL EXPENSES IN CONNECTION WITH SALES IN THE PHILIPPINES OF IMPORTED GOODS OF THE SAME CLASS OR KIND;
- (2) THE USUAL COSTS OF TRANSPORT AND INSURANCE AND ASSOCIATED COSTS INCURRED WITHIN THE PHILIPPINES; AND
- (3) THE CUSTOMS DUTIES AND OTHER NATIONAL TAXES PAYABLE IN THE PHILIPPINES BY REASON OF THE IMPORTATION OR SALE OF THE GOODS.

IF NEITHER THE IMPORTED GOODS, NOR IDENTICAL NOR SIMILAR IMPORTED GOODS ARE SOLD AT OR ABOUT THE TIME OF IMPORTATION OF THE GOODS BEING VALUED IN THE PHILIPPINES IN THE CONDITION AS IMPORTED, THE CUSTOMS VALUE SHALL, SUBJECT TO THE CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPH, BE BASED ON THE UNIT PRICE AT WHICH THE IMPORTED GOODS OR IDENTICAL OR SIMILAR IMPORTED GOODS ARE SOLD IN THE PHILIPPINES IN THE CONDITION AS IMPORTED AT THE EARLIEST DATE AFTER THE IMPORTATION OF THE GOODS BEING VALUED BUT WITHIN NINETY (90) DAYS AFTER SUCH IMPORTATION.

IF NEITHER THE IMPORTED GOODS NOR IDENTICAL NOR SIMILAR IMPORTED GOODS ARE SOLD IN THE PHILIPPINES IN THE CONDITION AS IMPORTED, THEN, IF THE IMPORTER SO REQUESTS, THE DUTIABLE VALUE SHALL BE BASED ON THE UNIT PRICE AT WHICH THE IMPORTED GOODS, AFTER FURTHER PROCESSING, ARE SOLD IN THE GREATEST AGGREGATE QUANTITY TO PERSONS IN THE PHILIPPINES WHO ARE NOT RELATED TO THE PERSONS FROM WHOM THEY BUY SUCH GOODS, SUBJECT TO ALLOWANCE FOR THE VALUE

1       ADDED BY SUCH PROCESSING AND DEDUCTIONS PROVIDED UNDER  
2       SUBSECTIONS (D)(1), (2), AND (3) HEREOF.

3       (E) METHOD FIVE. COMPUTED VALUE. – THE DUTIABLE  
4       VALUE UNDER THIS METHOD SHALL BE THE COMPUTED VALUE  
5       WHICH SHALL BE THE SUM OF:

- 6       (1) THE COST OR VALUE OF MATERIALS AND FABRICATION OR  
7       OTHER PROCESSING EMPLOYED IN PRODUCING THE IMPORTED  
8       GOODS;
- 9       (2) THE AMOUNT FOR PROFIT AND GENERAL EXPENSES EQUAL TO  
10      THAT USUALLY REFLECTED IN THE SALE OF GOODS OF THE  
11      SAME CLASS OR KIND AS THE GOODS BEING VALUED WHICH ARE  
12      MADE BY PRODUCERS IN THE COUNTRY OF EXPORTATION FOR  
13      EXPORT TO THE PHILIPPINES;
- 14     (3) THE FREIGHT, INSURANCE FEES AND OTHER TRANSPORTATION  
15     EXPENSES FOR THE IMPORTATION OF THE GOODS;
- 16     (4) ANY ASSIST, IF ITS VALUE IS NOT INCLUDED UNDER PARAGRAPH  
17     (1) HEREOF; AND
- 18     (5) THE COST OF CONTAINERS AND PACKING, IF THEIR VALUES ARE  
19     NOT INCLUDED UNDER PARAGRAPH (1) HEREOF.

20       THE BUREAU SHALL NOT REQUIRE OR COMPEL ANY PERSON  
21       WHO IS NOT A RESIDENT OF THE PHILIPPINES TO PRODUCE FOR  
22       EXAMINATION, OR TO ALLOW ACCESS TO, ANY ACCOUNT OR  
23       OTHER RECORD FOR THE PURPOSE OF DETERMINING A COMPUTED  
24       VALUE. HOWEVER, INFORMATION SUPPLIED BY THE PRODUCER OF  
25       THE GOODS FOR THE PURPOSE OF DETERMINING THE CUSTOMS  
26       VALUE MAY BE VERIFIED IN ANOTHER COUNTRY WITH THE  
27       AGREEMENT OF THE PRODUCER: PROVIDED, THAT SUFFICIENT  
28       ADVANCE NOTICE IS GIVEN TO THE GOVERNMENT OF THE  
29       COUNTRY IN QUESTION AND THE LATTER DOES NOT OBJECT TO THE  
30       INVESTIGATION.

31       (F) METHOD SIX. FALLBACK VALUE. – IF THE DUTIABLE  
32       VALUE CANNOT BE DETERMINED UNDER THE METHODS DESCRIBED  
33       ABOVE, IT SHALL BE DETERMINED BY USING OTHER REASONABLE  
34       MEANS CONSISTENT WITH THE PRINCIPLES OF THE WORLD TRADE  
35       ORGANIZATION (WTO) AGREEMENT ON CUSTOMS VALUATION, AND  
36       ON THE BASIS OF DATA AVAILABLE IN THE PHILIPPINES.

37       IF THE IMPORTER SO REQUESTS, THE IMPORTER SHALL BE  
38       INFORMED IN WRITING OF THE DUTIABLE VALUE DETERMINED



1 UNDER METHOD SIX AND HOW SUCH VALUE WAS ACTUALLY  
2 DETERMINED.

3 NO DUTIABLE VALUE SHALL BE DETERMINED UNDER  
4 METHOD SIX ON THE BASIS OF:

- 5 (1) THE SELLING PRICE IN THE PHILIPPINES OF GOODS PRODUCED IN  
6 THE PHILIPPINES;  
7 (2) A SYSTEM THAT PROVIDES FOR THE ACCEPTANCE FOR CUSTOMS  
8 PURPOSES OF THE HIGHER OF TWO ALTERNATIVE VALUES;  
9 (3) THE PRICE OF GOODS IN THE DOMESTIC MARKET OF THE  
10 COUNTRY OF EXPORTATION;  
11 (4) THE COST OF PRODUCTION, OTHER THAN COMPUTED VALUES,  
12 THAT HAVE BEEN DETERMINED FOR IDENTICAL OR SIMILAR  
13 GOODS IN ACCORDANCE WITH METHOD 5 HEREOF;  
14 (5) THE PRICE OF GOODS FOR EXPORT TO A COUNTRY OTHER THAN  
15 THE PHILIPPINES;  
16 (6) MINIMUM CUSTOMS VALUES; OR  
17 (7) ARBITRARY OR FICTITIOUS VALUES.

18 IF IN THE COURSE OF DETERMINING THE DUTIABLE VALUE OF  
19 IMPORTED GOODS, IT BECOMES NECESSARY TO DELAY THE FINAL  
20 DETERMINATION OF SUCH DUTIABLE VALUE, THE IMPORTER SHALL  
21 NEVERTHELESS BE ABLE TO SECURE THE RELEASE OF THE  
22 IMPORTED GOODS UPON THE FILING OF A SUFFICIENT GUARANTEE  
23 IN THE FORM OF A SURETY BOND, A DEPOSIT, CASH OR SOME  
24 OTHER APPROPRIATE INSTRUMENT, COVERING THE ULTIMATE  
25 PAYMENT OF CUSTOMS DUTIES AND TAXES FOR WHICH THE GOODS  
26 MAY BE LIABLE: PROVIDED, HOWEVER, THAT GOODS, THE  
27 IMPORTATION OF WHICH IS PROHIBITED OR WHERE THE RELEASE  
28 OF THE PROPERTY IS CONTRARY TO LAW, SHALL NOT BE RELEASED  
29 UNDER ANY CIRCUMSTANCE WHATSOEVER.

30 NOTHING IN THIS SECTION SHALL BE CONSTRUED AS  
31 RESTRICTING OR CALLING INTO QUESTION THE RIGHT OF THE  
32 COLLECTOR OF CUSTOMS TO SATISFY HIMSELF AS TO THE TRUTH  
33 OR ACCURACY OF ANY STATEMENT, DOCUMENT OR DECLARATION  
34 PRESENTED FOR CUSTOMS VALUATION PURPOSES. WHEN A  
35 DECLARATION HAS BEEN PRESENTED AND WHERE THE COLLECTOR  
36 OF CUSTOMS HAS REASON TO DOUBT THE TRUTH OR ACCURACY OF  
37 THE PARTICULARS OR OF DOCUMENTS PRODUCED IN SUPPORT OF  
38 THIS DECLARATION, THE COLLECTOR OF CUSTOMS MAY ASK THE

1 IMPORTER TO PROVIDE FURTHER EXPLANATION, INCLUDING  
2 DOCUMENTS OR OTHER EVIDENCE, THAT THE DECLARED VALUE  
3 REPRESENTS THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE  
4 FOR THE IMPORTED GOODS, ADJUSTED IN ACCORDANCE WITH THE  
5 PROVISIONS OF SUBSECTION (A) HEREOF.

6 IF, AFTER RECEIVING FURTHER INFORMATION, OR IN THE  
7 ABSENCE OF A RESPONSE, THE COLLECTOR OF CUSTOMS STILL HAS  
8 REASONABLE DOUBT ABOUT THE TRUTH OR ACCURACY OF THE  
9 DECLARED VALUE, IT MAY BE DEEMED THAT THE CUSTOMS VALUE  
10 OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER  
11 METHOD ONE, WITHOUT PREJUDICE TO AN IMPORTER'S RIGHT TO  
12 APPEAL PURSUANT TO THE WTO AGREEMENT ON CUSTOMS  
13 VALUATION. BEFORE TAKING A FINAL DECISION, THE COLLECTOR  
14 OF CUSTOMS SHALL COMMUNICATE TO THE IMPORTER, IN WRITING  
15 IF REQUESTED, HIS GROUNDS FOR DOUBTING THE TRUTH OR  
16 ACCURACY OF THE PARTICULARS OR DOCUMENTS PRODUCED, AND  
17 GIVE THE IMPORTER A REASONABLE OPPORTUNITY TO RESPOND.  
18 WHEN A FINAL DECISION IS MADE, THE COLLECTOR OF CUSTOMS  
19 SHALL INFORM THE IMPORTER IN WRITING OF THE DECISION AND  
20 THE GROUNDS THEREFOR.

21 [ Where the Commissioner of Customs has reason to doubt the truth or  
22 accuracy of the declaration or particulars or documents provided in support of  
23 declared value of the importation, he may require the importer to give further  
24 explanation thereof and to submit additional documents or other evidence to show  
25 that the declared value represents the total amount paid or payable for the  
26 imported goods. ]

27 [ If after receiving the explanation of the importer the Commissioner of  
28 Customs still has reasonable doubt as to the accuracy of the declared value, the  
29 Commissioner of Customs may proceed with the alternative methods specified  
30 hereunder, as follows: ]

31 [ The dutiable value shall be the transaction value of identical goods sold  
32 for export to the Philippines at or about the date of exportation of the goods being  
33 valued; ]

34  
35 [ If the dutiable value cannot be determined under the preceding method, it  
36 shall be transaction value of similar goods sold for export to the Philippines at or  
37 about the date of exportation of the goods being valued; ]

[ If the dutiable value still cannot be determined through the successive application of the two immediately preceding methods, the order of succession of the following methods may be reversed upon request of the importer unless the Commissioner of Customs deems that he will experience real difficulties in determining the dutiable value by using the computed value, in which case the Commissioner of Customs may refuse such a request subject to the provisions of the General Agreement on Tariffs and Trade (GATT) 1994 and the Uruguay Round Final Act, in which event the valuation of the imported goods shall be determined as indicated hereunder; ]

[ (1) The unit price at which the imported goods or identical or similar imported goods are sold domestically, in the same condition as when imported, in the greatest aggregate quantity, to persons not related to the seller, at or about the time of the importation of the goods being valued, subject to the applicable deductions as provided under the GATT 1994 and the Uruguay Round Final Act; or ]

[ (2) The computed value which shall be the sum of: ]

[ (a) The cost or value of raw materials employed in producing the imported good; ]

[ (b) The amount for profit and general expenses equal to the amount for profit and general expenses as reflected in the sale of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for the Philippines; and ]

[ (c) The freight, insurance fees and other transportation expenses for the importation of the goods; ]

[ If the dutiable value cannot be determined under any of the preceding methods described above, it shall be determined by using other reasonable means consistent with the principles and general provisions of GATT 1994, the agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade as contained in the Uruguay Round Final Act, and on the basis of data available in the Philippines. ]

[ The correct dutiable value of the imported goods referred to above shall be ascertained by the Commissioner of Customs from reports of revenue or commercial attaches or other Philippine diplomatic officers and from such other sources of information as may be available to the Bureau of Customs. Such values shall be established and published by the Commissioner of Customs from time to time, and such values shall be binding upon the importers and the Bureau of Customs until changed and new value or values are similarly established and published. ]

[ Values shall be published in at least one (1) newspaper of general circulation and other publications readily available to the public. Any importer or other interested party who is dissatisfied with the published value shall have fifteen (15) days from the date of publication of such published value the opportunity to file a protest on the questioned value and the Commissioner of Customs shall resolve the protest within fifteen (15) days from receipt of such protest, either by amending the published value or retaining the same. Whatever his decision may be must likewise be published. ]

[ If, in the course of determining the dutiable value of imported goods, it becomes necessary to delay the final determination of such dutiable value, the importer may secure the release of the imported goods upon the filing of a bond which shall solely be in cash, in an amount equivalent to the imposable duties and taxes on the imported goods in question plus twenty-five percent (25%) thereof, conditioned upon the payment of duties and taxes for which the imported goods may be liable: Provided, however, That goods the importation of which is prohibited by law shall not be released under any circumstance whatsoever. ]

[ For purposes of the preceding paragraphs, the terms: ]

[ (1) "Reasonable doubt" shall refer to any condition that creates a probable cause to make the Commissioner of Customs believe in the inaccuracy of the invoice value of imported goods as reflected by the importer in his customs declaration, for valuation purposes. Such condition may include but is not limited to any of the following situations: ]

[ (a) If the sale or price is subject to some consideration for which a value cannot be determined with respect to the goods being valued such as:]

[ (i) When the seller fixes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities; ]

[ (ii) When the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller; ]

[ (iii) When the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on the condition that he will receive a specified quantity of finished goods; ]

[ (b) Or, if part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the

provisions of Article 8 of the agreement in the implementation of Article VII of the General Agreement on Tariffs and Trade as contained in the Uruguay Round Final Act; and ]

[ (c) If the buyer and the seller are related to one another, and such relationship influenced the price of the goods. Such persons shall be deemed related if: ]

[ (i) They are officers or directors of one another's businesses; ]

[ (ii) They are legally recognized partners in business; ]

[ (iii) They are employer and employee; ]

[ (iv) Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stock or shares of both seller and buyer; ]

[ (v) One of them directly or indirectly controls the other; ]

[ (vi) Both of them are directly or indirectly controlled by a third person;]

[ (vii) Together they directly or indirectly control a third person; or ]

[ (viii) They are members of the same family including brothers and sisters, (whether by whole or half blood), spouse, ancestors, and lineal descendants. ]

[ (2) "Identical goods" shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical. ]

[ (3) "Similar goods" shall mean goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark shall be among the factors to be considered in determining whether goods are similar. ]

[ Transitory Provisions. – Upon the effectivity of this Act and until such time when the Congress authorizes the shift to transaction value before January 1, 2000 as provided under Section 3 of this Act, the dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the export value at which, at the time of exportation, the same or identical, like, or similar article is freely offered for sale in the principal export markets of the exporting country for exportation to the Philippines, in the usual wholesale quantities and in the ordinary course of trade (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the export value nearest to the date of exportation, including the value of all containers, coverings and/or packings of

1 any kind and all other expenses, costs and charges incident to placing the article  
2 in a condition ready for shipment to the Philippines, and freight, as well as  
3 insurance premium covering the transportation of such articles to the port of entry  
4 in the Philippines. ]

5 [ Where the export value of the article cannot be ascertained thereat or  
6 where there exists a reasonable doubt as to the fairness of such value, then the  
7 export value of the article for exportation to the Philippines shall be the export  
8 value of the article in the principal export markets of the country of manufacture  
9 or origin, if such country is not the country of exportation. ]

10 [ Where the export value of the goods of the article cannot be ascertained  
11 thereat or there exists a reasonable doubt as to the fairness of such value, then the  
12 export value of the article shall be the export value of such article for exportation  
13 to the Philippines in any third country with the same stage of economic  
14 development as the country of exportation. ]

15 [ Where the dutiable value cannot be ascertained as provided in the  
16 preceding paragraphs, or where there exists a reasonable doubt as to the dutiable  
17 value of the imported article declared in the entry, the dutiable value shall be the  
18 domestic wholesale selling price of such or similar article in Metro Manila or  
19 other principal markets in the Philippines on the date the duty becomes payable  
20 on the article under appraisement, in the usual wholesale quantities and in the  
21 ordinary course of trade, minus: ]

22 [ (a) Not more than twenty-five percent (25% of the domestic wholesale  
23 selling price for expenses and profits; and ]

24 [ (b) Duties and taxes paid thereon. ]

25 [ The correct dutiable value of imported articles shall be ascertained by  
26 the Commissioner of Customs using for that purpose reports of Revenue or  
27 Commercial Attaches or other Philippine diplomatic officers or such other sources  
28 of information that may be available to the Bureau of Customs. Such values shall  
29 be published from time to time. ]

30 [ Values shall be published in a manner that will make them readily  
31 available to the public. Any importer or other interested party who is dissatisfied  
32 with the published value shall have fifteen (15) days from the date of publication  
33 of such published values the opportunity to file protest on the questioned value,  
34 and the Commissioner of Customs shall resolve the protest within fifteen (15)  
35 days from such protest either by amending the published value or retaining the  
36 same. Whatever his decision may be must likewise be published. ]

37 [ If, in the course of determining the dutiable value of imported goods, it  
38 becomes necessary to delay the final determination of such dutiable value, the

1 importer may secure the release of the imported articles upon the filing of a bond  
2 which shall solely be in cash in an amount equivalent of the imposable duties and  
3 taxes on the imported goods in question plus twenty-five percent (25%) thereof,  
4 conditioned upon the payment of customs duties and taxes for which the imported  
5 goods may be liable: Provided, however, That imported goods the importation of  
6 which is prohibited by law shall not be released under any circumstances  
7 whatsoever. ]

8 [ In the interest of national economy, general welfare and/or national  
9 security, the Congress shall, upon the recommendation of the President, by joint  
10 resolution, order the shift to transaction value, as provided under Section 1 of this  
11 Act, as the basis of dutiable value of an imported article subject to an ad valorem  
12 rate of duty even before January 1, 2000. ]

13 [ The Secretary of Finance shall, upon the recommendation of the  
14 Commissioner of Customs, promulgate the necessary rules and regulations for the  
15 effective implementation of this Act. ]

16 [ The Commissioner of Customs may delegate his power to determine  
17 dutiable values and to release imported goods under cash bond as provided in this  
18 law in cases where there are no established and published values covering the  
19 importation: Provided, That in such cases, the Collector of Customs concerned  
20 shall immediately render a complete report to the Commissioner of Customs and  
21 the latter shall, without delay, establish and publish the correct dutiable value or  
22 values for the importation, after which all Collectors of Customs shall be guided  
23 accordingly in the assessment of import duties and taxes on similar or like  
24 importations. ]

25 [ The Commissioner of Customs shall create such body or bodies to  
26 receive and hear protest regarding published values. Such body or bodies shall  
27 hear and receive the evidence and shall submit its or their recommendations to the  
28 Commissioner of Customs. The hearing body shall submit its report in writing  
29 and shall convey to all interested parties whatever decision reached by the  
30 Commissioner thereon. During the effectivity of any published values, any  
31 interested party may petition the Commissioner of Customs for a review of the  
32 published value for the purpose of raising or lowering such value. ]”

SEC. 2. Section 1603 of Part 5, Title IV of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

“SEC. 1603. *Finality of Liquidation.* - When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of [one year] THREE (3) YEARS from the date of the final payment of duties, in the absence of fraud or protest OR COMPLIANCE AUDIT PURSUANT TO THE PROVISIONS OF THIS CODE, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.”

SEC. 3. Section 2401 of Part 3, Title VI of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

“SEC. 2401. *Supervision and Control over [Judicial] CRIMINAL AND CIVIL Proceedings.* - [In the absence of special provision, judicial action and proceedings instituted on behalf of the government pursuant to the provisions of this Code shall be subject to the supervision and control of the Commissioner.] CIVIL AND CRIMINAL ACTIONS AND PROCEEDINGS INSTITUTED IN BEHALF OF THE GOVERNMENT UNDER THE AUTHORITY OF THIS CODE OR OTHER LAW ENFORCED BY THE BUREAU SHALL BE BROUGHT IN THE NAME OF THE GOVERNMENT OF THE PHILIPPINES AND SHALL BE CONDUCTED BY CUSTOMS OFFICERS BUT NO CIVIL OR CRIMINAL ACTION FOR THE RECOVERY OF DUTIES OR THE ENFORCEMENT OF ANY FINE, PENALTY OR FORFEITURE UNDER THIS CODE SHALL BE FILED IN COURT WITHOUT THE APPROVAL OF THE COMMISSIONER.

SEC. 4. Five new Sections are hereby inserted before Section 3514 of Part 2, Title VIII of the Tariff and Customs Code of the Philippines, as amended, to read as follows:

“SEC. 3514. REQUIREMENT TO KEEP RECORDS. - SUBJECT TO SECTION 1603 HEREOF, ALL IMPORTERS ARE REQUIRED TO KEEP AT THEIR PRINCIPAL PLACE OF BUSINESS, IN THE MANNER PRESCRIBED BY REGULATIONS TO BE ISSUED BY THE COMMISSIONER OF CUSTOMS AND FOR A PERIOD OF THREE (3) YEARS FROM THE DATE OF FILING OF THE IMPORT ENTRY, ALL THE RECORDS OF THEIR IMPORTATIONS AND/OR BOOKS OF ACCOUNTS, BUSINESS AND COMPUTER SYSTEMS AND ALL CUSTOMS COMMERCIAL DATA INCLUDING PAYMENT RECORDS RELEVANT FOR THE VERIFICATION OF THE ACCURACY OF THE TRANSACTION VALUE DECLARED BY THE IMPORTERS AND/OR BROKERS ON THE IMPORT ENTRY.



1 ALL BROKERS ARE REQUIRED TO KEEP AT THEIR PRINCIPAL  
2 PLACE OF BUSINESS, IN THE MANNER PRESCRIBED BY  
3 REGULATIONS TO BE ISSUED BY THE COMMISSIONER OF CUSTOMS  
4 AND FOR A PERIOD OF THREE (3) YEARS FROM THE DATE OF FILING  
5 OF THE IMPORT ENTRY, COPIES OF THE ABOVE MENTIONED  
6 RECORDS COVERING TRANSACTIONS THAT THEY HANDLE.

7 IMPORTERS AND/OR BROKERS MUST, WHEN REQUIRED BY  
8 THE CUSTOMS OFFICER CONDUCTING THE COMPLIANCE AUDIT  
9 PROVIDED IN SECTION 3515 HEREOF:

- 10 (1) MAKE THE RECORDS AVAILABLE TO THE DULY AUTHORIZED  
11 CUSTOMS OFFICER;  
12 (2) ANSWER ANY QUESTIONS IN RELATION TO THE DOCUMENTS;  
13 AND  
14 (3) PROVIDE CERTIFIED COPIES OF THE RECORDS AND DOCUMENTS.

15 WHERE INFORMATION IS RECORDED OR STORED BY MEANS  
16 OF AN ELECTRONIC SYSTEM OR OTHER DEVICE, THE IMPORTER  
17 AND/OR BROKER SHALL, AT THE REQUEST OF THE CUSTOMS  
18 OFFICER, OPERATE THE SYSTEM/DEVICE OR CAUSE IT TO BE  
19 OPERATED TO GENERATE THE INFORMATION REQUIRED BY THE  
20 CUSTOMS OFFICER."

21 "SEC. 3515. COMPLIANCE AUDIT. THE IMPORTER AND/OR  
22 BROKER SUBJECT OF A COMPLIANCE AUDIT SHALL ALLOW ANY  
23 CUSTOMS OFFICER AUTHORIZED BY THE COMMISSIONER OF  
24 CUSTOMS TO ENTER DURING OFFICE HOURS THE PLACE OF  
25 BUSINESS, FACTORY OR WAREHOUSE OR OTHER FACILITY OF THE  
26 IMPORTER AND/OR BROKER TO CONDUCT AUDIT EXAMINATION,  
27 INSPECTION, AND VERIFICATION OF:

- 28 (1) THE DOCUMENT FLOW;  
29 (2) FINANCIAL FLOW;  
30 (3) GOODS INVENTORY; AND  
31 (4) OTHER BUSINESS PROCESSES

32 NECESSARY OR RELEVANT IN DETERMINING THE ADEQUACY AND  
33 INTEGRITY OF THE MANUAL OR ELECTRONIC SYSTEM BY WHICH  
34 SUCH RECORDS ARE CREATED AND STORED AS REQUIRED BY THE  
35 PRECEDING SECTION, AND TO ENSURE COMPLIANCE WITH  
36 CUSTOMS LAWS AND EXISTING RULES AND REGULATIONS,  
37 PARTICULARLY IN RELATION TO CUSTOMS VALUATION, TARIFF  
38 CLASSIFICATION, AND COUNTRY OF ORIGIN.

1           FOR THE ABOVE PURPOSES, THE DULY AUTHORIZED  
2 CUSTOMS OFFICER SHALL HAVE FULL AND FREE ACCESS TO ALL  
3 BOOKS, RECORDS, AND DOCUMENTS, AND ANY PROPERTY AND  
4 PROCESS, WHETHER IN THE CUSTODY OR UNDER THE CONTROL OF  
5 THE IMPORTER, BROKER OR ANY OTHER PERSON.

6           THE AUTHORIZED CUSTOMS OFFICER MAY REQUIRE THE  
7 IMPORTER AND/OR BROKER TO MAKE CERTIFIED COPIES OF ANY  
8 SUCH DOCUMENT OR EXTRACTS THEREOF. A COPY OF ANY SUCH  
9 DOCUMENT CERTIFIED BY OR ON BEHALF OF THE IMPORTER  
10 AND/OR BROKER IS ADMISSIBLE IN EVIDENCE IN ALL COURTS AS IF  
11 IT WERE THE ORIGINAL.

12           AN AUTHORIZED CUSTOMS OFFICER IS NOT ENTITLED TO  
13 ENTER THE PLACE OF BUSINESS, FACTORY OR WAREHOUSE OR  
14 OTHER FACILITY UNDER THIS SECTION UNLESS, BEFORE SO DOING,  
15 THE OFFICER PRODUCES TO THE PERSON OCCUPYING OR  
16 APPARENTLY IN CHARGE OF THE FACILITY WRITTEN EVIDENCE OF  
17 THE FACT THAT HE OR SHE IS AN AUTHORIZED OFFICER. THE  
18 PERSON OCCUPYING OR APPARENTLY IN CHARGE OF THE FACILITY  
19 SHALL PROVIDE THE OFFICER WITH ALL REASONABLE FACILITIES  
20 AND ASSISTANCE FOR THE EFFECTIVE EXERCISE OF POWERS UNDER  
21 THIS SECTION.

22           UNLESS OTHERWISE PROVIDED HEREIN OR IN OTHER  
23 PROVISIONS OF LAW, THE BUREAU MAY, IN CASE OF DISOBEDIENCE  
24 OR REFUSAL TO GRANT ACCESS TO THE CUSTOMS OFFICER, INVOKE  
25 THE AID OF THE PROPER REGIONAL TRIAL COURT WITHIN WHOSE  
26 JURISDICTION THE MATTER FALLS. THE COURT MAY PUNISH SUCH  
27 REFUSAL AS CONTEMPT. IN ADDITION, THE FACT THAT THE  
28 IMPORTER AND/OR BROKER WHO DENIES THE AUTHORIZED  
29 CUSTOMS OFFICER FULL AND FREE ACCESS TO PERTINENT  
30 RECORDS DURING THE CONDUCT OF A COMPLIANCE AUDIT SHALL  
31 CREATE A PRESUMPTION OF INACCURACY IN THE CUSTOMS  
32 DECLARATIONS FOR THEIR IMPORTED GOODS AND SHALL  
33 CONSTITUTE GROUNDS FOR THE BUREAU TO CONDUCT A RE-  
34 ASSESSMENT OF SUCH GOODS.

35           THIS IS WITHOUT PREJUDICE TO THE CRIMINAL AND  
36 ADMINISTRATIVE SANCTIONS IMPOSED BY THIS CODE AND OTHER  
37 LAWS AND REGULATIONS THAT MAY BE IMPOSED AGAINST  
38 CONTUMACIOUS IMPORTERS AND/OR BROKERS UNDER EXISTING

1 LAWS AND REGULATIONS INCLUDING THE AUTHORITY TO HOLD  
2 DELIVERY OR RELEASE OF THEIR IMPORTED ARTICLES.

3 “SEC. 3516. SCOPE OF THE AUDIT. –

4 (1) THE AUDIT OF IMPORTERS SHALL BE UNDERTAKEN:

5 (a) WHEN FIRMS ARE SELECTED BY A COMPUTER-AIDED RISK  
6 MANAGEMENT SYSTEM, THE PARAMETERS OF WHICH ARE  
7 TO BE BASED ON OBJECTIVE AND QUANTIFIABLE DATA  
8 AND ARE TO BE APPROVED BY THE SECRETARY OF  
9 FINANCE UPON RECOMMENDATION OF THE  
10 COMMISSIONER OF CUSTOMS. THE CRITERIA FOR  
11 SELECTING FIRMS TO BE AUDITED SHALL INCLUDE, BUT  
12 NOT BE LIMITED TO, THE FOLLOWING:

13 (i) RELATIVE MAGNITUDE OF CUSTOMS REVENUE FROM  
14 THE FIRM;

15 (ii) THE RATES OF DUTIES OF THE FIRM’S IMPORTS;

16 (iii) THE COMPLIANCE TRACK RECORD OF THE FIRM; AND

17 (iv) AN ASSESSMENT OF THE RISK TO REVENUE OF THE  
18 FIRM’S IMPORT ACTIVITIES.

19 (b) WHEN ERRORS IN THE IMPORT DECLARATION ARE  
20 DETECTED;

21 (c) WHEN FIRMS VOLUNTARILY REQUEST TO BE AUDITED,  
22 SUBJECT TO THE APPROVAL OF THE COMMISSIONER OF  
23 CUSTOMS.

24 (2) BROKERS SHALL BE AUDITED TO VALIDATE AUDITS OF THEIR  
25 IMPORTER CLIENTS AND/OR FILL IN INFORMATION GAPS  
26 REVEALED DURING AN AUDIT OF THEIR IMPORTER CLIENTS.”

27 “SEC. 3517. DOCUMENTS IN FOREIGN LANGUAGE. – WHERE A  
28 DOCUMENT IN A FOREIGN LANGUAGE IS PRESENTED TO A CUSTOMS  
29 OFFICER IN RELATION TO THE CARRYING OUT OF ANY DUTY OR  
30 THE EXERCISE OF ANY POWER OF THE BUREAU UNDER THIS CODE,  
31 THE OFFICER MAY REQUIRE THE PERSON WHO PRESENTED THE  
32 DOCUMENT TO SUPPLY THE OFFICER AN ENGLISH OR FILIPINO  
33 TRANSLATION OF SUCH DOCUMENT.”

34 “SEC. 3518. RECORDS TO BE KEPT BY THE BUREAU. – THE  
35 BUREAU SHALL LIKEWISE KEEP A RECORD OF AUDIT RESULTS IN A  
36 DATABASE OF IMPORTER AND BROKER PROFILES, TO INCLUDE BUT  
37 NOT BE LIMITED TO:

38 (1) ARTICLES OF INCOPORATION;

(2) THE COMPANY STRUCTURE, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO:

- (a) INCORPORATORS AND BOARD OF DIRECTORS;
- (b) KEY OFFICERS; AND
- (c) ORGANIZATIONAL STRUCTURE;
- (3) KEY IMPORTATIONS;
- (4) PRIVILEGES ENJOYED;
- (5) PENALTIES; AND
- (6) RISK CATEGORY(IES)."

SEC. 5. Section 3514 of Part 2, Title VIII of the Tariff and Customs Code, as amended, is accordingly renumbered as Section 3519.

SEC. 6. Part 3, Title VIII of the Tariff and Customs Code, as amended, shall be renamed as "PROVISIONS ON PENALTIES."

SEC. 7. Section 3604 of Part 3, Title VIII of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 3604. *Statutory Offenses of Officials and Employees.* – Every official, agent or employee of the Bureau [of Customs] or of any other agency of the government charged with the enforcement of the provisions of this Code, who is guilty of any delinquency herein below indicated shall be punished with a fine of not less than five thousand pesos nor more than fifty thousand pesos and imprisonment for not less than one year nor more than ten years and perpetual disqualification to hold public office, to vote and to participate in any public election:

- a. Those guilty of extortion or willful oppression under color of law.
- b. Those who knowingly demand other or greater sums than are authorized by law or receive any fee, compensation, or reward except as by law prescribed, for the performance of any duty.
- c. Those who willfully neglect to give receipts, as required by law for any sum collection in the performance of duty, or who willfully neglect to perform any of the duties enjoined by law.
- d. Those who conspire or collude with another or others to defraud the customs revenue or otherwise violate the law.
- e. Those who willfully make opportunity for any person to defraud the customs revenue or who do or fail to do any act with intent to enable any person to defraud said revenue.
- f. Those who negligently or designedly permit the violation of the law by any other person.

- 1 g. Those who make or sign any false entry or entries in any book, or make or  
 2 sign any false certificate or return in any case where the law requires the  
 3 making by them of such entry, certificate or return.
- 4 h. Those who, having knowledge or information of a violation of the tariff and  
 5 customs law or any fraud committed on the revenue collectible by the Bureau  
 6 [of Customs], fail to report such knowledge or information to their superior  
 7 official or to report as otherwise required by law.
- 8 i. Those who, without the authority of law, demand or accept or attempt to  
 9 collect directly or indirectly as payment of otherwise, any sum of money or  
 10 other thing of value for the compromise, adjustment, or settlement of any  
 11 charge or complaint for any violation or alleged violation of law.
- 12 J. THOSE WHO, WITHOUT AUTHORITY OF LAW, DISCLOSE  
 13 CONFIDENTIAL INFORMATION GAINED DURING ANY  
 14 INVESTIGATION OR AUDIT, OR USE SUCH INFORMATION FOR  
 15 PERSONAL GAIN OR TO THE DETRIMENT OF THE GOVERNMENT,  
 16 THE BUREAU OR THIRD PARTIES.”

17 SEC. 8. Two new Sections are hereby inserted before Section 3610 of Part 3,  
 18 Title VIII of the Tariff and Customs Code of the Philippines , as amended, to read as  
 19 follows:

20 “SEC. 3610. FAILURE TO KEEP IMPORTATION RECORDS AND GIVE  
 21 FULL ACCESS TO CUSTOMS OFFICERS. – ANY PERSON WHO FAILS TO  
 22 KEEP ALL THE RECORDS OF IMPORTATIONS AND/OR BOOKS OF  
 23 ACCOUNTS, BUSINESS AND COMPUTER SYSTEMS AND ALL  
 24 CUSTOMS COMMERCIAL DATA IN THE MANNER PRESCRIBED IN  
 25 PART 2, SECTION 3514 OF THIS TITLE SHALL BE PENALIZED AS  
 26 FOLLOWS:

- 27 (1) FIRST OFFENSE: ADMINISTRATIVE FINE OF ONE HUNDRED  
 28 THOUSAND PESOS (P100, 000.00).
- 29 (2) SECOND OFFENSE: ADMINISTRATIVE FINE OF ONE HUNDRED  
 30 FIFTY THOUSAND PESOS (P150, 000.00).
- 31 (3) THIRD AND EACH SUBSEQUENT OFFENSE: ADMINISTRATIVE FINE  
 32 OF TWO HUNDRED THOUSAND PESOS (P200,000) AND CRIMINAL  
 33 PROSECUTION PUNISHABLE BY IMPRISONMENT OF NOT LESS  
 34 THAN TWO (2) YEARS AND ONE DAY BUT NOT MORE THAN SIX (6)  
 35 YEARS.

36 THESE PENALTIES SHALL LIKEWISE BE IMPOSED AGAINST  
 37 IMPORTERS AND/OR BROKERS WHO DENY AN AUTHORIZED  
 38 CUSTOMS OFFICER FULL AND FREE ACCESS TO SUCH RECORDS,

BOOKS OF ACCOUNTS, BUSINESS AND COMPUTER SYSTEMS, AND ALL CUSTOMS COMMERCIAL DATA INCLUDING PAYMENT RECORDS.”

“SEC. 3611. FAILURE TO PAY CORRECT DUTIES AND TAXES ON IMPORTED GOODS. – ANY PERSON WHO, AFTER BEING SUBJECTED TO COMPLIANCE AUDIT AS PROVIDED IN SECTION 3515 OF PART 2, TITLE VIII HEREOF, IS FOUND TO HAVE INCURRED DEFICIENCIES IN DUTIES AND TAXES PAID FOR IMPORTED GOODS, SHALL BE PENALIZED ACCORDING TO TWO (2) DEGREES OF CULPABILITY SUBJECT TO ANY MITIGATING, AGGRAVATING OR EXTRAORDINARY FACTORS THAT ARE CLEARLY ESTABLISHED BY THE AVAILABLE EVIDENCE:

(1) NEGLIGENCE – WHEN A DEFICIENCY RESULTS FROM AN OFFENDER’S FAILURE, THROUGH AN ACT OR ACTS OF OMISSION OR COMMISSION, TO EXERCISE REASONABLE CARE AND COMPETENCE TO ENSURE THAT A STATEMENT MADE IS CORRECT, IT SHALL BE DETERMINED TO BE NEGLIGENT AND PUNISHABLE BY A FINE AT LEAST EQUAL TO, BUT NOT MORE THAN DOUBLE, THE REVENUE LOSS.

HOWEVER, THE COMMISSIONER OF CUSTOMS, SUBJECT TO APPROVAL OF THE SECRETARY OF FINANCE, MAY WAIVE THE PENATY PROVIDED FOR HEREIN WHEN:

(a) THE IMPORTER MAKES A VOLUNTARY AND FULL DISCLOSURE OF THE DEFICIENCY PRIOR TO THE DATE OF RECEIPT OF WRITTEN NOTICE OF AUDIT; PROVIDED THAT THE WAIVER SHALL ONLY BE TO THE EXTENT OF THE VOLUNTARY DEFICIENCY DISCLOSURE MADE;

(b) THE DEFICIENCY RESULTS FROM RELIANCE IN GOOD FAITH ON ANY OFFICIAL RULING OR INFORMATION IN WRITING ISSUED BY THE BUREAU, THE DEPARTMENT OF FINANCE OR ANY OTHER APPROPRIATE GOVERNMENT AGENCY AUTHORIZED TO MAKE SUCH RULING OR PROVIDE SUCH INFORMATION.

(2) FRAUD – WHEN THE MATERIAL FALSE STATEMENT OR ACT IN CONNECTION WITH THE TRANSACTION WAS COMMITTED OR OMITTED KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE, IT SHALL BE DETERMINED TO BE FRAUDULENT AND BE PUNISHABLE BY A

103  
+10  
113

1 FINE EQUIVALENT TO FOUR (4) TIMES THE REVENUE LOSS AND  
2 IMPRISONMENT OF NOT LESS THAN TWO (2) YEARS BUT NOT  
3 MORE THAN EIGHT (8) YEARS.

4 THE DECISION OF THE COMMISSIONER OF CUSTOMS, UPON PROPER  
5 HEARING, TO IMPOSE ADMINISTRATIVE PENALTIES AS PRESCRIBED IN  
6 THIS SECTION MAY BE APPEALED IN ACCORDANCE WITH SECTION 2402  
7 HEREOF.”

8 SEC. 9. Section 3610 of Part 3, Title VIII of the Tariff and Customs Code of the  
9 Philippines, as amended, is accordingly renumbered as Section 3612.

10 SEC. 10. *Rules and Regulations.* – The Secretary of Finance shall, upon the  
11 recommendation of the Commissioner of Customs, promulgate the necessary rules and  
12 regulations for the effective implementation of this Act.

13 SEC. 11. *Separability Clause.* – If any of the provisions of this Act is declared  
14 invalid by a competent court, the remainder of this Act or any provision not affected by  
15 such declaration of invalidity shall remain in force and effect.

16 SEC. 12. *Repealing Clause.* – All laws, decrees, executive orders, rules and  
17 regulations and other issuances or parts thereof which are inconsistent with this Act are  
18 hereby repealed or modified accordingly.

19 SEC. 13. *Effectivity.* – This Act shall take effect fifteen (15) days after its  
20 complete publication in at least two (2) newspapers of general circulation.

21 APPROVED.