

RECORD OF THE SENATE

THURSDAY, FEBRUARY 8, 2001

OPENING OF THE SESSION

At 10:26 a.m., the Senate President, Hon. Aquilino Q. Pimentel Jr. called the session to order.

The President. The 53rd session of the Senate in the Third Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Loren Legarda-Leviste. She is not yet in the hall. So let us have a one-minute... Ah, Senator Magsaysay will read the prayer on her behalf.

Everybody rose for the prayer.

PRAYER

Senator Magsaysay. This is on behalf of Sen. Loren Legarda-Leviste, Mr. President.

Mahal naming Panginoon,

Sa nalalapit na pagtatapos ng makasaysayang Kongresong ito, nais po namin Kayong bigyang pasasalamat sa Inyong walang tigil na paggabay sa aming isip, kilos at gawa. Kayo ang marapat naming bigyang pagpupugay dahil kung hindi dahil sa Inyong patnubay at sa talino at lakas na ipinagkaloob Ninyo sa amin, ay hindi po namin maisasagawa ang lahat ng mga samut-saring tungkulin namin bilang mga senador ng Republika, mambabatas at tagapaglingkod ng bayan.

Hiling namin na ang lahat ng mga batas na aming naipasa at naipatupad ay magdulot ng lubos na kabutihan at kaginhawaan sa aming mga milyun-milyong pinaglingkurang mamamayan, at para sa higit pang ikauunlad ng aming bayan. Huwag sana kaming makalimot na kami ay Inyong iniluklok sa aming kinalalagyan ngayon upang maging sanga at haligi ng Inyong kabutihan, at bilang mga tagapaglingkod lamang.

Alam namin na marami pa kaming mga bagay na dapat matutunan at maisagawa, at suliraning dapat gampanan sa aming pagbabalik sa susunod na Kongreso. Hiling po namin na sa aming pansamantalang pagtatapos ay mabigyan kami ng pagkakataon na makaipon pa ng kinakailangang lakas ng katawan at lakas ng espiritu, upang magampanan ang lahat ng ito.

Nagpapasalamat pokami, Panginoon, sa magandang samahan at pagkakaibigan na aming nabuo nitong mga nagdaang taon, na kahit na sa matinding pagdedebate at pagkakaiba ng aming mga opinyon, ay nananaig pa rin ang aming pagkakaisa bilang isang Kamara na may mataas na tungkulin at pananagutan sa Inyo at sa bayan. Ang ilan po sa amin ay magsisilbi na sa ibang pamaaraan. Hiling po namin na patuloy Ninyo silang gabayan at patnubayan sa bago nilang mga tungkulin.

Higit sa lahat, hinihiling po namin na ang nalalapit na eleksyon ay maging maayos, malaya, at mapayapa. Gabayan po Ninyo ang ating mga mamamayan sa pagpili ng mga pinuno na tapat sa kanilang tungkulin at sa layuning mapaunlad ang bayan.

Muli, ang aming taus-pusong pasasalamat sa Inyo aming mahal na Panginoon,

Amen.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary, reading:

Senator Teresa Aquino-Oreta	Present*
Senator Robert Z. Barbers	Absent**
Senator Rodolfo G. Biazon	Present*
Senator Renato L. <i>Compañero</i> Cayetano	Present
Senator Anna Dominique M.L. Coseteng ...	Present
Senator Miriam Defensor Santiago	Present*
Senator Franklin M. Drilon	Present
Senator Juan Ponce Enrile	Present
Senator Juan M. Flavies	Present
Senator Teofisto T. Guingona Jr.	Present
Senator Gregorio B. Honasan	Present
Senator Robert S. Jaworski	Present
Senator Loren B. Legarda-Leviste	Present*
Senator Ramon B. Magsaysay Jr.	Present
Senator Blas F. Ople	Present*
Senator John Henry R. Osmeña	Present
Senator Sergio R. Osmeña III	Present*
Senator Ramon B. Revilla	Present
Senator Raul S. Roco	Present
Senator Vicente C. Sotto III	Absent
Senator Francisco S. Tatad	Present
The President	Present

* Arrived after the roll call

** On account of illness

"Any proceeding directly affecting any ruling, order or decision of the Court of Tax Appeals shall have reference over all other civil proceedings except *habeas corpus*, workmen's compensation, and election cases."

SEC. 11. *Retention of personnel; security of tenure; upgrading of positions and salaries.* - All existing permanent personnel of the Court of Tax Appeals shall not be adversely affected by the amendment in this Act. They shall continue in office and shall not be removed or separated from the service except for cause as provided for by existing laws. The incumbent Executive Clerk of Court II and the two (2) Executive Clerks of Court I presently performing the functions of Clerk of Court and Deputy Clerks of Court shall be retained as Clerk of Court and Division Clerks of Court, respectively, under this Act. Further, the present positions and salaries of personnel shall be upgraded to the level of their counterparts in the Court of Appeals.

SEC. 12. *Transitory Provisions.* - In consonance with the above provisions, the incumbent Presiding Judge and Associate Judges shall immediately assume the position of Presiding Justice and Associate Justices, respectively, upon approval of this Act without the need of reappointment and shall automatically constitute a division under Section 2 hereof.

SEC. 13. *Appropriations.* - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 14. *Repealing Clause.* - All laws, executive orders, executive issuances or letters of instructions, or any part thereof, inconsistent with or contrary to the provisions of this Act are hereby deemed repealed, amended or modified accordingly.

SEC. 15. *Separability Clause.* - If for any reason any section or provision of this Act shall be declared unconstitutional or valid, the other parts thereof not affected thereby shall remain valid.

SEC. 16. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

CONFERENCE COMMITTEE REPORT
ONS. NO. 2196/H. NO. 8623
(Amending the Tariff & Customs Code)

Senator Tatad. Mr. President, I move that we now consider the Bicameral Conference Committee Report on the disagreeing provisions of Senate Bill No. 2196 and House Bill No. 8623.

The President. Is there any objection? [Silence] There being none, the motion is approved.

Senator Tatad. I ask that Senator Enrile be recognized once more to sponsor this report.

The President. Senator Enrile is recognized.

REPORT OF SENATOR ENRILE

Senator Enrile. Thank you, Mr. President.

Ladies and gentlemen of the Senate: The Conference Committee on the disagreeing provisions of Senate Bill No. 2196 and House Bill No. 8623, after having met and having fully discussed the subject matter of the conference taken up in the conference, hereby report the following:

1. The House version was adopted as the working draft.
2. Section 2 of the working draft, amending Section 1302 of the Tariff and Customs Code, TCCP, for short, on import entries was modified such that all importations under formal entry shall be covered by a Letter of Credit or any other verifiable document evidencing payment.
3. Section 2 of the Senate version, amending Section 1603 of the Tariff and Customs Code of the Philippines on the Finality of Liquidation, by increasing the period from one to three years, and adding compliance audit as one of the reasons for liquidation not to be final was adopted as Section 4 of the reconciled version.

As a consequential amendment to Section 1603 of the Tariff and Customs Code of the Philippines, Section 1407 of the same Code on Readjustment of Appraisal Classification or Return, was amended and inserted as Section 3 of the reconciled version.

4. Section 3 of the House version, adding a new section to the Tariff and Customs Code of the Philippines to be known as Section 2317 on the Government's Right of Compulsory Acquisition, was adopted as Section 5 of the reconciled version.

5. Section 3 of the Senate version, which amends Section 2401 of the Tariff and Customs Code of the Philippines on Supervision and Control Over Judicial Proceedings, by replacing the word "Judicial" with the words CRIMINAL AND CIVIL and by adding that the Bureau of Customs officers shall conduct such proceedings with the Commissioner's approval, was adopted as Section 6 of the reconciled version.

6. Section 4 of the House version, amending Section 2606 of the Tariff and Customs Code of the Philippines on the Disposition of Surplus from the Proceeds of Sale of Abandoned or Forfeited Articles, by adding the word ACQUIRED Articles to the coverage of Section 2606, and providing that a special trust fund be created for the purpose of financing the compulsory acquisition of imported goods by the government, was adopted as Section 7 of the reconciled version.

7. Section 4 of the Senate version, regarding the insertion of a new section in Part 2, Title VII of the Tariff and Customs Code of the Philippines, to be known as Section 3516 on the SCOPE OF THE AUDIT was adopted as Section 10 of the reconciled version.

8. Section 7 of the Senate version, amending Section 3604 of the Tariff and Customs Code of the Philippines on Statutory Offenses of Officials and Employees, by adding the disclosure without authority of law of confidential information gained during an investigation or audit, or the use of such information for personal gain or to the detriment of the government, the bureau or third parties, was adopted as Section 14 of the reconciled version.

9. The title of the reconciled version shall read:

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

In case of conflict between the statements stated in this Explanatory Statement and those of the provisions of the reconciled version in the accompanying Conference Committee Report, the provisions of the latter shall prevail.

I submit, for the consideration of the Chamber, Mr. President, this Bicameral Conference Committee Report.

APPROVAL OF THE CONFERENCE COMMITTEE
REPORT ON S. NO. 2196/H. NO. 8623

Senator Tatad. Mr. President, I move for the approval of the report.

The President. We thank Senator Enrile for that report. Is there any objection? [Silence] There being none, the motion is approved.

The following is the whole text of the conference committee report:

CONFERENCE COMMITTEE REPORT

The Conference Committee on the disagreeing provisions of House Bill No. 8623, entitled

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

and Senate Bill No. 2196, entitled

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

having met, after full and free conference, has agreed to recommend to their respective Houses that House Bill No. 8623 in consolidation with Senate Bill No. 2196, be approved in accordance with the attached copy of the bill as reconciled and approved by the conferees:

CONFEREES ON THE PART OF THE SENATE

(Sgd.) HON. JUAN PONCE ENRILE

(Sgd.) ROBERT S. JAWORSKI

(Sgd.) JUAN M. FLAVIER

CONFEREES ON THE PART OF THE HOUSE OF REPRESENTATIVES

(Sgd.) HON. OSCAR S. MORENO

(Sgd.) HON. DANILO E. SUAREZ

HON. JOKER P. ARROYO

(Sgd.) HON. MAGTANGGOL T. GUNIGUNDO I

(Sgd.) HON. HERMINIO G. TEVES

HON. CONSTANTINO G. JARAULA

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

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

SECTION. 1. Section 201 of 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 [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]:

(1) 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)] (A) Commissions and brokerage fees (except
buying commissions);

(B) Cost of containers; [and]

(C) The cost packing, whether for labour or materials;

[(b)] (D) The value, APPORTIONED AS
APPROPRIATE, OF THE FOLLOWING GOODS AND
SERVICES: materials, components, parts and SIMILAR
items incorporated in the imported goods; tools; dies;
moulds and similar items used in the production of
imported goods; materials consumed in the production
of the imported goods; and 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: *PROVIDED*, THAT METHOD ONE
SHALL NOT BE USED IN DETERMINING THE
DUTIABLE VALUE OF IMPORTED GOODS IF:

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

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

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

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

(B) THE SALE OR PRICE IS SUBJECT
TO SOME CONDITION OR CONSIDERATION
FOR WHICH A VALUE CANNOT BE DETER-
MINED WITH RESPECT TO THE GOODS
BEING VALUED;

(C) 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 HEREOF; OR

(D) 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) THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THEM;

(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 THOSE RELATED BY AFFINITY OR CONSANGUINITY UP TO THE FOURTH CIVIL DEGREE

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

(B) *METHOD TWO. - TRANSACTION VALUE OF IDENTICAL GOODS.* - WHERE THE DUTIABLE VALUE CANNOT BE DETERMINED UNDER METHOD ONE, THE DUTIABLE VALUE SHALL BE

THE TRANSACTION VALUE OF IDENTICAL GOODS SOLD FOR EXPORT TO THE PHILIPPINES AND EXPORTED AT OR ABOUT THE SAME TIME AS THE GOODS BEING VALUED. "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.

(C) *METHOD THREE. - TRANSACTION VALUE OF SIMILAR GOODS.* - WHERE THE DUTIABLE VALUE CANNOT BE DETERMINED UNDER THE PRECEDING METHOD, THE DUTIABLE VALUE SHALL BE THE TRANSACTION VALUE OF SIMILAR GOODS SOLD FOR EXPORT TO THE PHILIPPINES AND EXPORTED AT OR ABOUT THE SAME TIME AS THE GOODS BEING VALUED. "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 COMMERCIALY 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.

IF THE DUTIABLE VALUE STILL CANNOT BE DETERMINED THROUGH THE SUCCESSIVE APPLICATION OF THE TWO IMMEDIATELY PRECEDING METHODS, THE DUTIABLE VALUE SHALL BE DETERMINED UNDER METHOD FOUR OR, WHEN THE DUTIABLE VALUE STILL CANNOT BE DETERMINED UNDER THAT METHOD, UNDER METHOD FIVE, EXCEPT THAT, AT THE REQUEST OF THE IMPORTER, THE ORDER OF APPLICATION OF METHODS FOUR AND FIVE SHALL BE REVERSED: *PROVIDED, HOWEVER, THAT IF THE COMMISSIONER OF CUSTOMS DEEMS THAT HE WILL EXPERIENCE REAL DIFFICULTIES IN DETERMINING THE DUTIABLE VALUE USING METHOD FIVE, THE COMMISSIONER OF CUSTOMS MAY REFUSE SUCH A REQUEST IN WHICH EVENT THE DUTIABLE VALUE SHALL BE 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 SUCH COUNTRY 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) WHERE APPROPRIATE, THE COSTS AND CHARGES REFERRED TO IN SUBSECTION (A) (3), (4) AND (5); AND

(4) 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 CONDITIONS AS IMPORTED, THE CUSTOMS VALUE SHALL, SUBJECT TO THE CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPH HEREOF, BE BASED ON THE UNIT PRICE AT WHICH THE IMPORTED GOODS OR IDENTICAL OR SIMILAR IMPORTED GOODS SOLD IN THE PHILIPPINES IN THE CONDITION AS IMPORTED AT THE EARLIEST DATE AFTER THE IMPORTATION OF THE GOODS BEING VALUED BUT BEFORE THE EXPIRATION OF 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 ADDED BY SUCH PROCESSING AND DEDUCTIONS PROVIDED UNDER SUBSECTIONS (D) (1), (2), (3) AND (4) HEREOF.

(E) *METHOD FIVE - COMPUTED VALUE.* - THE DUTIABLE VALUE UNDER THIS METHOD SHALL BE THE COMPUTED VALUE WHICH SHALL BE THE SUM OF:

(1) THE COST OR VALUE OF MATERIALS AND FABRICATION OR OTHER PROCESSING EMPLOYED IN PRODUCING THE IMPORTED GOODS;

(2) THE AMOUNT FOR PROFIT AND GENERAL EXPENSES EQUAL TO THAT USUALLY 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 EXPORT TO THE PHILIPPINES;

(3) THE FREIGHT, INSURANCE FEES AND OTHER TRANSPORTATION EXPENSES FOR THE IMPORTATION OF THE GOODS;

(4) ANY ASSIST, IF ITS VALUE IS NOT INCLUDED UNDER PARAGRAPH (1) HEREOF; AND

(5) THE COST OF CONTAINERS AND PACKING, IF THEIR VALUES ARE NOT INCLUDED UNDER PARAGRAPH (1) HEREOF.

THE BUREAU OF CUSTOMS SHALL NOT REQUIRE OR COMPEL ANY PERSON NOT RESIDING IN THE PHILIPPINES TO PRODUCE FOR EXAMINATION, OR TO ALLOW ACCESS TO, ANY ACCOUNT OR OTHER RECORD FOR THE PURPOSE OF DETERMINING A COMPUTED VALUE. *HOWEVER*, INFORMATION SUPPLIED BY THE PRODUCER OF THE GOODS FOR THE PURPOSES OF DETERMINING THE CUSTOMS VALUE MAY BE VERIFIED IN ANOTHER COUNTRY WITH THE AGREEMENT OF THE PRODUCER AND PROVIDED THEY WILL GIVE SUFFICIENT ADVANCE NOTICE TO THE GOVERNMENT OF THE COUNTRY IN QUESTION AND THE LATTER DOES NOT OBJECT TO THE INVESTIGATION.

(F) **METHOD SIX. - FALLBACK VALUE.** - IF THE DUTIABLE VALUE CANNOT BE DETERMINED UNDER THE PRECEDING METHODS DESCRIBED ABOVE, IT SHALL BE DETERMINED BY USING OTHER REASONABLE MEANS AND ON THE BASIS OF DATA AVAILABLE IN THE PHILIPPINES.

IF THE IMPORTER SO REQUESTS, THE IMPORTER SHALL BE INFORMED IN WRITING OF THE DUTIABLE VALUE DETERMINED UNDER METHOD SIX AND THE METHOD USED TO DETERMINE SUCH VALUE.

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

(1) THE SELLING PRICE IN THE PHILIPPINES OF GOODS PRODUCED IN THE PHILIPPINES;

(2) A SYSTEM THAT PROVIDES FOR THE ACCEPTANCE FOR CUSTOMS PURPOSES OF THE HIGHER OF TWO ALTERNATIVE VALUES;

(3) THE PRICE OF GOODS IN THE DOMESTIC MARKET OF THE COUNTRY OF EXPORTATION;

(4) THE COST OF PRODUCTION, OTHER THAN COMPUTED VALUES, THAT HAVE BEEN DETERMINED FOR IDENTICAL OR SIMILAR GOODS IN ACCORDANCE WITH METHOD 5 HEREOF;

(5) THE PRICE OF GOODS FOR EXPORT TO A COUNTRY OTHER THAN THE PHILIPPINES;

(6) MINIMUM CUSTOMS VALUES; OR

(7) ARBITRARY OR FICTITIOUS VALUES.

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 SHALL NEVERTHELESS BE ABLE TO SECURE THE RELEASE OF THE IMPORTED GOODS UPON THE FILING OF A SUFFICIENT GUARANTEE IN THE FORM OF A SURETY BOND, A DEPOSIT, CASH OR SOME OTHER APPROPRIATE INSTRUMENT IN AN AMOUNT EQUIVALENT TO THE IMPOSABLE DUTIES AND TAXES ON THE IMPORTED GOODS IN QUESTION CONDITIONED UPON THE PAYMENT OF CUSTOMS 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.

NOTHING IN THIS SECTION SHALL BE CONSTRUED AS RESTRICTING OR CALLING INTO QUESTION THE RIGHT OF THE COLLECTOR OF CUSTOMS TO SATISFY HIMSELF AS TO THE TRUTH OR ACCURACY OF ANY STATEMENT, DOCUMENT OR DECLARATION PRESENTED FOR CUSTOMS VALUATION PURPOSES. WHEN A DECLARATION HAS BEEN PRESENTED AND WHERE THE CUSTOMS ADMINISTRATION HAS REASON TO DOUBT THE TRUTH OR ACCURACY OF THE PARTICULARS OR OF DOCUMENTS PRODUCED IN SUPPORT OF THIS DECLARATION, THE CUSTOMS ADMINISTRATION MAY ASK THE IMPORTER TO PROVIDE FURTHER EXPLANATION, INCLUDING DOCUMENTS OR OTHER EVIDENCE, THAT THE DECLARED VALUE REPRESENTS THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE FOR THE IMPORTED GOODS, ADJUSTED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (A) HEREOF.

IF, AFTER RECEIVING FURTHER INFORMATION, OR IN THE ABSENCE OF A RESPONSE, THE CUSTOMS ADMINISTRATION STILL HAS REASONABLE DOUBTS ABOUT THE TRUTH OR ACCURACY OF THE DECLARED VALUE, IT MAY, WITHOUT PREJUDICE TO AN IMPORTER'S RIGHT TO APPEAL PURSUANT TO ARTICLE 11 OF THE WORLD TRADE ORGANIZATION AGREEMENT ON CUSTOMS VALUATION, BE DEEMED THAT THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER METHOD ONE. BEFORE TAKING A FINAL DECISION, THE COLLECTOR OF CUSTOMS SHALL COMMUNICATE TO THE IMPORTER, IN WRITING IF REQUESTED, HIS GROUNDS FOR DOUBTING THE TRUTH OR ACCURACY OF THE PARTICULARS OR DOCUMENTS PRODUCED AND GIVE THE IMPORTER A REASONABLE OPPORTUNITY TO RESPOND. WHEN A FINAL DECISION IS MADE, THE CUSTOMS ADMINISTRATION SHALL COMMUNICATE TO THE IMPORTER IN WRITING ITS DECISION AND THE GROUNDS THEREFOR.

[Where the Commissioner of Customs has reason to doubt the truth or accuracy of the declaration or particulars or documents provided in support of declared value of the importation, he may require the importer to

give further explanation thereof and to submit additional documents or other evidence to show that the declared value represents the total amount paid or payable for the imported goods.]

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

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

[If the dutiable value cannot be determined under the preceding method, it shall be the transaction value of similar goods sold for export to the Philippines at or 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 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 attachés 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 customs 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 appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical.]

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

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

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

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

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

[(b) Duties and taxes paid thereon.]

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

[Values shall be published in a manner that will make them 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 values the opportunity to file protest on the questioned value, and the Commissioner of Customs shall resolve the protest within fifteen (15) days from 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 articles upon filing of a bond which shall solely be in cash in an amount equivalent of the impossible duties and taxes on the imported goods in question plus twenty-five percent (25%) thereof, conditioned upon the payment of customs

duties and taxes for which the imported goods may be liable: *Provided, however,* That imported goods the importation of which is prohibited by law shall not be released under any circumstances whatsoever.]

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

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

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

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

SEC. 2. Section 1302 of Part 2, Title IV of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

SEC. 1302. *Import Entries.* - All imported articles, except importations admitted free and duty under Subsection "k", Section one hundred and five of this Code, shall be subject to a formal or informal entry. Articles of a commercial nature intended for sale, barter

or hire, the dutiable value of which is Two thousand pesos (P2,000.000) or less, and personal and household effects or articles, not in commercial quantity, imported in passenger's baggage, mail or otherwise, for personal use, shall be cleared on an informal entry whenever duty, tax or other charges are collectible.

The Commissioner may, upon instruction of the Secretary of Finance, for the protection of domestic industry or of the revenue, require a formal entry, regardless of value, whatever be the purpose and nature of the importation.

A formal entry may be for immediate consumption, or under irrevocable domestic letter of credit, bank guarantee or bond for:

- (a) Placing the article in customs bonded warehouse;
- (b) Constructive warehousing and immediate transportation to other ports of the Philippines upon proper examination and appraisal; or
- (c) Constructive warehousing and immediate exportation.

Import entries under irrevocable domestic letter of credit, bank guarantee or bond shall be subject to the provisions of Title V, Book II of this Code.

"ALL IMPORTATIONS ENTERED UNDER FORMAL ENTRY SHALL BE COVERED BY A LETTER OF CREDIT OR ANY OTHER VERIFIABLE DOCUMENT EVIDENCING PAYMENT."

SEC. 3. Section 1407 of Part 3 Title IV of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

SEC. 1407. *Readjustment of Appraisal, Classification or Return.* - Such appraisal, classification or return as finally passed upon and approved or modified by the Collector shall not be altered or modified in any manner, except:

- (a) Within one year after payment of the duties, upon statement of error in conformity with section seventeen hundred and seven hereof, approved by the Collector.
- (b) Within fifteen days after such payment upon request for reappraisal and/or reclassification

addressed to the Commissioner by the Collector, if the appraisal and/or classification is deemed to be low.

(c) Upon request for reappraisal and/or reclassification, in the form of a timely protest addressed to the Collector by the interested party if the latter should be dissatisfied with the appraisal or return.

"(D) UPON DEMAND BY THE COMMISSIONER OF CUSTOMS AFTER THE COMPLETION OF COMPLIANCE AUDIT PURSUANT TO THE PROVISIONS OF THIS CODE."

SEC. 4. 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. 5. A new section to be known as Section 2317 is hereby inserted under Part 2, Title VI of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 2317. *GOVERNMENT'S RIGHT OF COMPULSORY ACQUISITION.* - IN ORDER TO PROTECT GOVERNMENT REVENUES AGAINST THE UNDERVALUATION OF GOODS SUBJECT TO AD VALOREM DUTY, THE COMMISSIONER OF CUSTOMS MAY ACQUIRE IMPORTED GOODS UNDER QUESTION FOR A PRICE EQUAL TO THEIR DECLARED CUSTOMS VALUE PLUS ANY DUTIES ALREADY PAID ON THE GOODS, PAYMENT FOR WHICH SHALL BE MADE WITHIN TEN (10) WORKING DAYS FROM ISSUANCE OF A WARRANT SIGNED BY THE COMMISSIONER OF CUSTOMS FOR THE ACQUISITION OF SUCH GOODS.

AN IMPORTER WHO IS DISSATISFIED WITH A DECISION OF THE COMMISSIONER OF CUSTOMS PERTAINING TO THIS SECTION MAY, WITHIN TWENTY (20) WORKING DAYS AFTER THE DATE ON WHICH NOTICE OF THE DECISION

IS GIVEN, APPEAL TO THE SECRETARY OF FINANCE AND THEREAFTER IF STILL DISSATISFIED, TO THE COURT OF TAX APPEALS AS PROVIDED FOR IN SECTION 2402 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED.

WHERE NO APPEAL IS MADE BY THE IMPORTER, OR UPON REAFFIRMATION OF THE COMMISSIONER'S DECISION DURING THE APPEALS PROCESS, THE BUREAU OF CUSTOMS OR ITS AGENT SHALL SELL THE ACQUIRED GOODS PURSUANT TO EXISTING LAWS AND REGULATIONS.

NOTHING IN THIS SECTION LIMITS OR AFFECTS ANY OTHER POWERS OF THE BUREAU OF CUSTOMS WITH RESPECT TO THE DISPOSITION OF THE GOODS OR ANY LIABILITY OF THE IMPORTER OR ANY OTHER PERSON WITH RESPECT TO AN OFFENSE COMMITTED IN THE IMPORTATION OF THE GOODS.

SEC. 6. 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. 7. Section 2606 of Part 5, Title VI of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 2606. *Disposition of Surplus from the Proceeds of Sale of Abandoned or Forfeited OR ACQUIRED Articles.* - Except in the case of the sale of abandoned or forfeited articles, and [all] articles

which are not claimed by payment of duties, taxes and other charges and compliance with all legal requirements within the prescribed period, any surplus remaining after the satisfaction of all unlawful charges as aforesaid shall be retained by the Collector for ten (10) days subject to the call of the owner.

"Upon [the] failure of the owner to claim such surplus within this period, the Collector shall deposit such amount [with the Treasurer of the Philippines as a special deposit, to be paid to the proper claimant demanding the same within one year thereafter, upon such evidence and in such manner as the Commission on Audit shall prescribe] IN A SPECIAL TRUST FUND WHICH SHALL BE USED SOLELY FOR THE PURPOSE OF FINANCING THE COMPULSORY ACQUISITION OF IMPORTED GOODS BY THE GOVERNMENT AS PROVIDED IN SECTION 2317 HEREOF.

"In all such cases the Collector shall report fully his action in the matter, together with all the particulars, to the Commissioner and to the Chairman on Audit. After one year, [all unclaimed special deposits shall be considered by the Bureau of Treasury as customs receipts,] THE UNUSED AMOUNTS IN SUCH SPECIAL TRUST FUNDS, EXCEPT FOR AN AMOUNT NECESSARY TO FINANCE FORCED GOVERNMENT ACQUISITIONS BEFORE THE FIRST AUCTION OF THE SUCCEEDING YEAR, SHALL BE TURNED OVER TO THE BUREAU OF TREASURY AS CUSTOMS RECEIPTS."

SEC. 8. A new section to be known as Section 3514 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3514. *REQUIREMENT TO KEEP RECORDS.* - 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 IMPORTATION, 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/CUSTOMS BROKERS ON THE IMPORT ENTRY.

ALL BROKERS 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 IMPORTATION COPIES OF THE ABOVE MENTIONED RECORDS COVERING TRANSACTIONS THAT THEY HANDLE."

SEC. 9. A new section to be known as Section 3515 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3515. COMPLIANCE AUDIT OR EXAMINATION OF RECORDS. - THE IMPORTERS/ CUSTOMS BROKERS SHALL ALLOW ANY CUSTOMS OFFICER AUTHORIZED BY THE BUREAU OF CUSTOMS TO ENTER DURING OFFICE HOURS ANY PREMISES OR PLACE WHERE THE RECORDS REFERRED TO IN THE PRECEDING SECTION ARE KEPT TO CONDUCT AUDIT EXAMINATION, INSPECTION, VERIFICATION AND/OR INVESTIGATION OF THOSE RECORDS EITHER IN RELATION TO SPECIFIC TRANSACTIONS OR TO THE ADEQUACY AND INTEGRITY OF THE MANUAL OR ELECTRONIC SYSTEMS BY WHICH SUCH RECORDS ARE CREATED AND STORED. FOR THIS PURPOSE, A DULY AUTHORIZED CUSTOMS OFFICER SHALL HAVE FULL AND FREE ACCESS TO ALL BOOKS, RECORDS, AND DOCUMENTS NECESSARY OR RELEVANT FOR THE PURPOSE OF COLLECTING THE PROPER DUTIES AND TAXES.

IN ADDITION, THE AUTHORIZED CUSTOMS OFFICER MAY MAKE COPIES OF, OR TAKE EXTRACTS FROM ANY SUCH DOCUMENTS. THE RECORDS OR DOCUMENTS MUST, AS SOON AS PRACTICABLE AFTER COPIES OF SUCH HAVE BEEN TAKEN, BE RETURNED TO THE PERSON IN CHARGE OF SUCH DOCUMENTS.

A COPY OF ANY SUCH DOCUMENT CERTIFIED BY OR ON BEHALF OF THE IMPORTER/ BROKER IS ADMISSIBLE IN EVIDENCE IN ALL COURTS AS IF IT WERE THE ORIGINAL.

AN AUTHORIZED CUSTOMS OFFICER IS NOT ENTITLED TO ENTER ANY PREMISES UNDER THIS SECTION UNLESS, BEFORE SO DOING, THE OFFICER PRODUCES TO THE PERSON OCCUPYING OR APPARENTLY IN CHARGE OF THE PREMISES WRITTEN EVIDENCE OF THE FACT THAT HE OR

SHE IS AN AUTHORIZED OFFICER. THE PERSON OCCUPYING OR APPARENTLY IN CHARGE OF THE PREMISES ENTERED BY AN OFFICER SHALL PROVIDE THE OFFICER WITH ALL REASONABLE FACILITIES AND ASSISTANCE FOR THE EFFECTIVE EXERCISE OF POWERS UNDER THIS SECTION.

UNLESS OTHERWISE PROVIDED HEREIN OR IN OTHER PROVISIONS OF LAW, THE BUREAU OF CUSTOMS MAY, IN CASE OF DISOBEDIENCE, INVOKE THE AID OF THE PROPER REGIONAL TRIAL COURT WITHIN WHOSE JURISDICTION THE MATTER FALLS. THE COURT MAY PUNISH CONTUMACY OR REFUSAL AS CONTEMPT. IN ADDITION, THE FACT THAT THE IMPORTER/ BROKER DENIES THE AUTHORIZED CUSTOMS OFFICER FULL AND FREE ACCESS TO IMPORTATION RECORDS DURING THE CONDUCT OF A POST-ENTRY AUDIT SHALL CREATE A PRESUMPTION OF INACCURACY IN THE TRANSACTION VALUE DECLARED FOR THEIR IMPORTED GOODS AND CONSTITUTE GROUNDS FOR THE BUREAU OF CUSTOMS TO CONDUCT A RE-ASSESSMENT OF SUCH GOODS.

THIS IS WITHOUT PREJUDICE TO THE CRIMINAL SANCTIONS IMPOSED BY THIS CODE AND ADMINISTRATIVE SANCTIONS THAT THE BUREAU OF CUSTOMS MAY IMPOSE AGAINST CONTUMACIOUS IMPORTERS UNDER EXISTING LAWS AND REGULATIONS INCLUDING THE AUTHORITY TO HOLD DELIVERY OR RELEASE OF THEIR IMPORTED ARTICLES."

SEC. 10. A new Section to be known as Section 3516 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3516. SCOPE OF THE AUDIT. -

(A) THE AUDIT OF IMPORTERS SHALL BE UNDERTAKEN:

(1) WHEN FIRMS ARE SELECTED BY A COMPUTER-AIDED RISK MANAGEMENT SYSTEM, THE PARAMETERS OF WHICH ARE TO BE BASED ON OBJECTIVE AND QUANTIFIABLE DATA AND ARE TO BE APPROVED BY THE SECRETARY OF FINANCE UPON RECOMMENDATION OF THE COMMISSIONER OF CUSTOMS. THE CRITERIA FOR SELECTING FIRMS TO BE

AUDITED SHALL INCLUDE, BUT NOT LIMITED TO, THE FOLLOWING:

(A) RELATIVE MAGNITUDE OF CUSTOMS REVENUE FROM THE FIRM;

(B) THE RATES OF DUTIES OF THE FIRM'S IMPORTS;

(C) THE COMPLIANCE TRACK RECORD OF THE FIRM; AND

(D) AN ASSESSMENT OF THE RISK TO REVENUE OF THE FIRM'S IMPORT ACTIVITIES.

(2) WHEN ERRORS IN THE IMPORT DECLARATION ARE DETECTED;

(3) WHEN FIRMS VOLUNTARILY REQUEST TO BE AUDITED, SUBJECT TO THE APPROVAL OF THE COMMISSIONER OF CUSTOMS.

(B) BROKERS SHALL BE AUDITED TO VALIDATE AUDITS OF THEIR IMPORTER CLIENTS AND/OR FILL IN INFORMATION GAPS REVEALED DURING AN AUDIT OF THEIR IMPORTER CLIENTS."

SEC. 11. A new section to be known as Section 3517 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3517. *DOCUMENTS IN FOREIGN LANGUAGE*. - WHERE A DOCUMENT IN A FOREIGN LANGUAGE IS PRESENTED TO A CUSTOMS OFFICER IN RELATION TO THE CARRYING OUT OF ANY DUTY OR THE EXERCISE OF ANY POWER OF THE BUREAU OF CUSTOMS UNDER THIS CODE, SAID DOCUMENT IN A FOREIGN LANGUAGE MUST BE ACCOMPANIED WITH A TRANSACTION IN THE OFFICIAL LANGUAGE OF THIS COUNTRY."

SEC. 12. A new Section to be known as Section 3518 is hereby inserted in Part 2, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3518. *RECORDS TO BE KEPT BY CUSTOMS*. - THE BUREAU OF CUSTOMS SHALL LIKEWISE KEEP A RECORD OF AUDIT RESULTS IN A DATABASE OF IMPORTER AND BROKER PROFILES, TO INCLUDE BUT NOT LIMITED TO:

(A) ARTICLES OF INCORPORATIONS;

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

(1) INCORPORATORS AND BOARD OF DIRECTORS;

(2) KEY OFFICERS; AND

(3) ORGANIZATIONAL STRUCTURE;

(C) KEY IMPORTATIONS;

(D) PRIVILEGES ENJOYED;

(E) PENALTIES; AND

(F) RISK CATEGORY (IES)."

SEC. 13. Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, shall be renamed as "PROVISIONS ON PENALTIES".

SEC. 14. Section 3604 of Part 3, Title VII 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.

g. Those who make or sign any false entry or entries in any book, or make or sign any false certificate or return in any case where the law requires the making by them such entry, certificate or return.

h. Those who, having knowledge or information of a violation of the tariff and customs law or any fraud committed on the revenue collectible by the Bureau [of Customs], fail to report such knowledge or information to their superior official or to report as otherwise required by law.

i. Those who, without the authority of law, demand or accept or attempt to collect directly or indirectly as payment of otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law.

J. THOSE WHO, WITHOUT AUTHORITY OF LAW, DISCLOSE CONFIDENTIAL INFORMATION GAINED DURING ANY INVESTIGATION OR AUDIT, OR USE SUCH INFORMATION FOR PERSONAL GAIN OR TO THE DETRIMENT OF THE GOVERNMENT, THE BUREAU OR THIRD PARTIES."

SEC. 15. A new section to be known as Section 3610 is hereby inserted in Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3610. *FAILURE TO KEEP IMPORTATION RECORDS AND GIVE FULL ACCESS TO CUSTOMS OFFICERS.* - ANY PERSON WHO FAILS TO KEEP ALL THE RECORDS OF IMPORTATIONS AND/OR BOOKS OF ACCOUNTS, BUSINESS AND COMPUTER SYSTEMS AND ALL CUSTOMS COMMERCIAL DATA IN THE MANNER DESCRIBED IN PART 2, SECTION 3514 OF THIS TITLE SHALL BE PUNISHED WITH A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS

(P100,000.00) BUT NOT MORE THAN TWO HUNDRED THOUSAND PESOS (P200,000.00) AND/OR IMPRISONMENT OF NOT LESS THAN TWO (2) YEARS AND ONE DAY BUT NOT MORE THAN SIX (6) YEARS. THIS PENALTY SHALL LIKEWISE BE IMPOSED AGAINST IMPORTERS/BROKERS WHO DENY AN AUTHORIZED CUSTOMS OFFICER FULL AND FREE ACCESS TO SUCH RECORDS, BOOKS OF ACCOUNTS, BUSINESS AND COMPUTER SYSTEMS, AND ALL CUSTOMS COMMERCIAL DATA INCLUDING PAYMENT RECORDS. THIS IS WITHOUT PREJUDICE TO THE ADMINISTRATIVE SANCTIONS THAT THE BUREAU OF CUSTOMS MAY IMPOSE AGAINST THE CONTUMACIOUS IMPORTERS UNDER EXISTING LAWS AND REGULATIONS INCLUDING THE AUTHORITY TO HOLD DELIVERY OR RELEASE OF THEIR IMPORTED ARTICLES."

SEC. 16. A new section to be known as Section 3611 is hereby inserted in Part 3, Title VII of the Tariff and Customs Code of the Philippines, as amended, which shall read as follows:

"SEC. 3611. *FAILURE TO PAY CORRECT DUTIES AND TAXES ON IMPORTED GOODS.* - ANY PERSON WHO, AFTER BEING SUBJECTED TO POST-ENTRY AUDIT AND EXAMINATION AS PROVIDED IN SECTION 3515 OF PART 2, TITLE VII HEREOF, IS FOUND TO HAVE INCURRED DEFICIENCIES IN DUTIES AND TAXES PAID FOR IMPORTED GOODS, SHALL BE PENALIZED ACCORDING TO THREE (3) DEGREES OF CULPABILITY SUBJECT TO ANY MITIGATING, AGGRAVATING OR EXTRAORDINARY FACTORS THAT ARE CLEARLY ESTABLISHED BY THE AVAILABLE EVIDENCE:

(A) *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 EQUIVALENT TO NOT LESS THAN ONE-HALF (1/2) BUT NOT MORE THAN TWO (2) TIMES THE REVENUE LOSS.

(B) *GROSS NEGLIGENCE* - WHEN A DEFICIENCY RESULTS FROM AN ACT OR ACTS OF OMISSION OR COMMISSION DONE WITH ACTUAL KNOWLEDGE OR WANTON DISREGARD FOR THE RELEVANT FACTS AND WITH INDIFFERENCE

TO OR DISREGARD FOR THE OFFENDER'S OBLIGATION UNDER THE STATUTE, IT SHALL BE DETERMINED TO BE GROSSLY NEGLIGENT AND PUNISHABLE BY A FINE EQUIVALENT TO NOT LESS THAN TWO AND A HALF (2 1/2) BUT NOT MORE THAN FOUR (4) TIMES THE REVENUE LOSS.

(C) *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 FINE EQUIVALENT TO NOT LESS THAN FIVE (5) TIMES BUT NOT MORE THAN EIGHT (8) TIMES THE REVENUE LOSS AND IMPRISONMENT OF NOT LESS THAN TWO (2) YEARS BUT NOT MORE THAN EIGHT (8) YEARS.

THE DECISION OF THE COMMISSIONER OF CUSTOMS, UPON PROPER HEARING, TO IMPOSE PENALTIES AS PRESCRIBED IN THIS SECTION MAY BE APPEALED IN ACCORDANCE WITH SECTION 2402 HEREOF."

SEC. 17. The following provisions of the Tariff and Customs Code of the Philippines, as amended, are renumbered as follows:

(a) Section 3514 of Part 2, Title VII ("Words and Phrases Defined") is renumbered as Section 3519; and

(b) Section 3610 of Part 3, Title VII ("Violations of Tariff and Customs Laws and Regulations in General") is renumbered as Section 3612.

SEC. 18. *Rules and Regulations*. - The Secretary of Finance shall, upon the recommendation of the Commissioner of Customs, promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 19. *Repealing Clause*. - All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 20. *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, whichever date comes earlier.

Approved,

Senator Tatad. Mr. President, I move that we read the Reference of Business.

MANIFESTATION OF SENATOR ENRILE
(Extending Recognition to His House Counterpart)

Senator Enrile. Mr. President, a matter of special privilege.

The President. Senator Enrile is recognized.

Senator Enrile. May I just state that my counterpart in the House of Representatives, Cong. Danilo Suarez, is in the hall. I think he deserves some degree of recognition considering his contributions to these bills.

Thank you.

The President. That is right.

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The Secretary.

February 8, 2001

The Honorable
AQUILINO Q. PIMENTEL JR.
President of the Senate
GSIS Bldg., Financial Center
Pasay City 1308

Mr. President:

I have the honor to transmit herewith a copy of Resolution No. 177, entitled

RESOLUTION CONFIRMING PRESIDENT GLORIA
MACAPAGAL ARROYO'S NOMINATION OF
SENATOR TEOFISTO T. GUINGONA JR. AS
VICE PRESIDENT OF THE REPUBLIC OF THE
PHILIPPINES,

which was adopted by the House of Representatives on February 7, 2001.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO
Secretary General