

(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 Five 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."

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 of 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 (P2,000.00) 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 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 Criminal and Civil Proceedings.* – 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 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 failure of the owner to claim such surplus within this period, the Collector shall deposit such amount 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 of the Audit. After one year, 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 system or 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) 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 translation 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 be limited to:

- (a) Articles of Incorporation;
- (b) The company structure, which shall include but not be limited to:
 - (1) Incorporators and Board of Directors;
 - (2) Key officers; and
 - (3) Organizational structure;

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 be limited to, the following: