

ORGANIZACIÓN MUNDIAL DEL COMERCIO

G/VAL/N/1/PHL/1
5 de octubre de 2001

(01-4820)

Comité de Valoración en Aduana

Original: inglés

NOTIFICACIÓN DE CONFORMIDAD CON EL ARTÍCULO 22 DEL ACUERDO RELATIVO A LA APLICACIÓN DEL ARTÍCULO VII DEL ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO DE 1994

FILIPINAS

Se ha recibido de la Misión Permanente de Filipinas la siguiente comunicación, de fecha 12 de septiembre de 2001.

Con arreglo a lo dispuesto en el artículo 22 del Acuerdo relativo a la Aplicación del Artículo VII del Acuerdo General sobre Aranceles Aduaneros y Comercio, tengo el honor de notificar que Filipinas ha promulgado la Ley de la República N° 9135¹, titulada en parte "Ley por la que se modifican ciertas disposiciones del Decreto Presidencial N° 1464, denominado también Arancel y Código de Aduanas de Filipinas, tal como se ha modificado y con otros efectos", que prevé, entre otras cosas, la utilización del valor de transacción como base para el valor imponible de los artículos importados sujetos a un tipo de derecho *ad valorem*.

¹ En inglés solamente .

H. No. 8623
S. No. 2196

Republic of the Philippines
Congress of the Philippines
Metro Manila
Eleventh Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-fourth day
of July, two thousand.

[REPUBLIC ACT NO 9135]

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 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:

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

- (b) Cost of containers;
- (c) The cost packing, whether for labour or materials;
- (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;
- (e) The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer;
- (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;
- (3) The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;
- (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
- (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 determined 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, or 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 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.

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 cost, 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 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 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 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:

- (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

- (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 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 of 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, 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; or

(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 prescribed 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 acid 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.

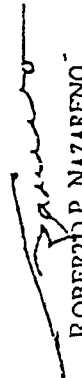
Approved,


AQUILINO Q. PIMENTEL JR.
President of the Senate


FELICIANO BELMONTE JR.
Speaker of the House
of Representatives

This Act is a consolidation of House Bill No. 8623 and Senate Bill No. 2196 was finally passed by the House of Representatives and the Senate on February 7, 2001 and February 8, 2001, respectively.


LUTIGARDO B. BARBO
Secretary of the Senate


ROBERT P. NAZARENO
Secretary General
House of Representatives

Approved: APR 27 2001



GLORIA MACAPAGAL-ARROYO
President of the Philippines



CGA Ordering # 02354