

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

SENATE
OFFICE OF THE SECRETARY

'04 JUN 30 P10:07

SENATE
S. No. 1058

RECEIVED BY: 

Introduced by Senator Edgardo J. Angara

EXPLANATORY NOTE

Efforts of the Government to suppress smuggling and other frauds upon the customs have been stymied by the indiscriminate issuance of temporary restraining orders and injunctive reliefs by judicial authorities. While the provisions of the Tariff and Customs Code on administrative proceedings leading to forfeiture and disposition of smuggled goods and the instruments used for smuggling seem fairly adequate, the provisions allowing judicial intervention have oftentimes rendered ineffective the serious efforts to go after the smugglers, the goods fraudulently imported, and the instruments of smuggling.

The disposition and forfeiture of goods seized by the Bureau of Customs will be strengthened under this bill. To expedite the disposition of these goods, the Secretary of Finance, upon recommendation of the Commissioner of Customs, is empowered to summarily seize and sell the same. Moreover, no temporary restraining order shall lie against the seizure and disposition of the subject goods as well as the aircraft or vessel used in transporting the same.

Administrative summary proceedings appear to be the most effective vehicle to curb smuggling. Judicial intervention should be invoked only at the level of the Supreme Court, doing away with the present state of the law where even Regional Trial Courts can stop the sale of forfeited smuggled property or even allow the posting of bonds for those whose vessels or aircraft were used in smuggling.

Smugglers themselves should not be allowed to profit from their own violation of our customs laws. They should be barred from involvement in auction sales of the very items or goods they brought in fraudulently.

In view of the foregoing, immediate passage of this bill is earnestly requested.


EDGARDO J. ANGARA

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AN ACT

RATIONALIZING THE FORFEITURE AND DISPOSITION OF PROPERTY SEIZED BY THE BUREAU OF CUSTOMS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED

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

SECTION 1. Section 2601 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

“Sec. 2601. *Property Subject to Sale.* – Property in customs custody shall be subject to sale under the conditions hereinafter provided:

“a. Abandoned articles;

“b. Articles entered under warehousing entry not withdrawn nor the duties and taxes paid thereon within the period prescribed under Sections 1908 of this Code;

“c. Seized property, other than contraband, after liability to sale shall have been established by proper administrative [or judicial] proceedings in conformity with the provision of this Code; and

“d. Any article subject to a valid lien for customs duties, taxes or other charges collectible by the Bureau of Customs, after the expiration of the period allowed for the satisfaction of the same.”

SEC. 2. Section 2604 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

“Sec. 2604. *Disqualification to Participate in Auction Sale.* – No Customs official or employee; THE OWNERS, OR OTHER AGENTS, OF THE PROPERTY SUBJECT TO SALE; AND, THE IMPORTER OR CONSIGNEE OF THE PROPERTY SUBJECT TO SALE; THE OWNERS, OR THEIR

AGENTS, OF THE VESSEL OR AIRCRAFT SUBJECT TO SALE shall be allowed to bid directly or indirectly in any customs auction.”

SEC 3. Section 2607 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

“Section. 2607. *Disposition of Articles Liable to Deterioration.* – Perishable articles shall be deposited in any appropriate bonded warehouse; and, if not immediately entered for export or for transportation from the vessel or aircraft in which imported or entered for consumption and the duties and the taxes paid thereon, such articles SHALL [may] be sold at auction [, after such public notice, not exceeding three days,] as the necessities of the case permit.

“When seizure shall be made of property which, in the opinion of the Collector, is liable to perish or be wasted or to depreciate greatly in value by keeping, or which cannot be kept without great disproportionate expense, whether such property consists of live animals or of any article, the appraiser shall so certify his appraisal, the Collector SHALL [may] proceed to advertise and sell the same at auction, upon notice as he shall deem to be reasonable.

“The same disposition SHALL [may] be made of any warehoused article when in the opinion of the Collector it is likely that the cost of depreciation, damage, leakage or other causes, may so reduce its value as to be insufficient to pay the duties, taxes and other charges thereon, if it should be permitted to be so kept and be subjected to sale in the usual course.

“PROVIDED, THAT IN ALL CASES INVOLVING ARTICLES LIABLE TO DETERIORATION, THE DETERMINATION THEREON SHALL BE EXCLUSIVE TO THE COLLECTOR AND SHALL BE FINAL ON THE MATTER; PROVIDED FURTHER, THAT THE AUCTION SALE SHALL BE HELD NOT LATER THAN TWO (2) DAYS AFTER THE PUBLIC NOTICE SET BY THE COLLECTOR.”

SEC. 4. Section 2610 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

“Section. 2610. *Disposition of Unsold Articles for Want of Bidders.* – Articles subject to sale at public auction by customs authorities shall be sold at a price not less than the wholesale value price in the domestic market of these or similar articles in the usual wholesale quantities and in the ordinary course of trade as determined in accordance with section twenty-three hundred and five of this code.

“When any article remains unsold in at least two public biddings for want of bidders or for lack of an acceptable bid, and the article is perishable and/or suitable for official use, then the Collector shall report the matter immediately to the Commissioner of Customs who SHALL [may, subject to the approval of the Secretary of Finance,] authorize the official use of that article by the Bureau of Customs to promote the intensive collection of taxes and/or to help prevent or suppress smuggling and other frauds upon the Customs, and if the article is not suitable for such use, then it may be channeled to the official use of other offices of the National Government AS THE COMMISSIONER OF CUSTOMS MAY DETERMINE. If the article is suitable for shelter or consists of foodstuffs, clothing materials or medicines then that article shall be given to government charitable institutions through the Department of Social WORK [Services] and Development. AGRICULTURAL PRODUCTS SHALL BE GIVEN TO THE DEPARTMENT OF AGRICULTURE FOR PROPER DISPOSITION.

“If the article offered for sale is not suitable either for official use or charity, then the same may be re-exported as government property, through the Department of Trade AND INDUSTRY or any other government entity through barter or sale. If the article cannot be disposed of as provided above, the Collector shall report the matter immediately to the Commissioner who SHALL [may, subject to the approval of the Secretary of Finance] dispose of the article to the best advantage of the government in a negotiated private sale which shall be consummated in the presence of a representative of the Commission of Audit., in the manner provide for by this Code.”

SEC. 5. Section 2612 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

“Section 2612. *Disposition of Smuggled Articles* . - Smuggled articles, after liability to seizure or forfeiture shall have been established by proper administrative [or judicial] proceedings in conformity with the provisions of this Code, shall be disposed of as provided for in Section 2610: Provided, That articles whose importation is prohibited under Section 102, sub-paragraphs b, c, d, e and j shall, upon order to the Collector in writing, be burned or destroyed, in such manner as the case may require as to render them absolutely worthless, in the presence of a representative each from the Commission on Audit, [Ministry] Department of Justice, Bureau of Customs, and if possible, any representative of the private sector.”

SEC. 6. A new section, to be referred to hereafter as Section 3613[A], is hereby inserted to the Tariff and Customs Code of the Philippines, the said new section to read as follows:

“SECTION. 3613[A]. SUMMARY PROCEDURE FOR SEIZURE AND FORFEITURE. – NOTWITHSTANDING THE PROVISIONS OF TITLE VI OF THIS CODE, PROPERTY WHICH ARE IMPORTED OR BROUGHT IN TO THE PHILIPPINES WITHOUT THE NECESSARY PERMIT AND/OR PAYMENT OF THE RELEVANT AND APPLICABLE TAXES, FEES AND CHARGES , SHALL BE SUMMARILY SEIZED AND FORFEITED IN FAVOR OF THE GOVERNMENT. ANY VESSEL OR AIRCRAFT USED TO BRING IN SAID IMPORTED GOODS INTO THE PHILIPPINES SHALL LIKEWISE BE SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.

“THE DECISION OF THE SECRETARY OF FINANCE, UPON THE RECOMMENDATION OF THE COMMISSIONER OF CUSTOMS, UNDER THIS SECTION SHALL BE FINAL AND UNAPPEALABLE.

“NO COURT, EXCEPT THE SUPREME COURT, SHALL ISSUE ANY TEMPORARY RESTRAINING ORDER OR ANY INJUNCTIVE RELIEF AGAINST THE SEIZURE, FORFEITURE OR SALE OF ANY OF THE GOODS OR ARTICLES COVERED BY THIS SECTION.

“THE OWNER OR OPERATOR OF ANY SEIZED VESSEL OR AIRCRAFT UNDER THIS SECTION SHALL BE BLACKLISTED FROM OPERATING AND/OR FROM ENGAGING IN TRADE IN THE PHILIPPINES.”

SEC. 7. *Separability Clause.* - If any part or parts of this Act should, for any reason, be held to be invalid or unconstitutional, the remaining parts thereof shall remain in full force and effect.

SEC. 8. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations and other issuances inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 9. *Effectivity.* – This Act shall take effect after fifteen (15) days from the date of publication in at least two (2) newspapers of general circulation.

Approved,