

UNREGULATED INFLUX OF IMPORTED VEGETABLES INTO THE PHILIPPINES”

P.S. Resolution No. 68, introduced by Senator Roxas, entitled:

“ A RESOLUTION

DIRECTING THE COMMITTEES ON TRADE AND COMMERCE, AND ECONOMIC AFFAIRS TO CONDUCT A JOINT INVESTIGATION, IN AID OF LEGISLATION, ON THE PROBLEM OF UNABATED SMUGGLING OF GOODS INTO THE COUNTRY TO THE DETRIMENT OF LOCAL PRODUCERS, MANUFACTURERS, RETAILERS AND CONSUMERS AND THE PHILIPPINE ECONOMY IN GENERAL, WITH THE GOAL OF RECOMMENDING MEASURES TO END THE PROBLEM OF SMUGGLING IN THE COUNTRY”

P.S. Resolution No. 97, introduced by Senators Roxas, Magsaysay Jr., Gordon, Lim and Enrile entitled:

“ A RESOLUTION

URGING THE OFFICE OF THE PRESIDENT TO RECONSTITUTE THE OFFICE OF THE ANTI-SMUGGLING TASK FORCE (NASTF), ANTI-SMUGGLING INTELLIGENCE AND INFORMATION CENTER (ASIIC), AS WELL AS THE CABINET OVERSIGHT COMMITTEE ON ANTI-SMUGGLING (COCAS), IN LIGHT OF THE UNABATED ILLEGAL ENTRY OF VARIOUS COMMERCIAL GOODS INTO THE COUNTRY, WHICH HAS ADVERSELY AFFECTED BOTH THE BUSINESS AND PUBLIC SECTOR, IN EFFECT FURTHER DAMAGING THE NATIONAL ECONOMY”

P.S. Resolution No. 119, introduced by Pimentel Jr., entitled:

“ RESOLUTION

DIRECTING THE APPROPRIATE SENATE COMMITTEE TO INVESTIGATE, IN AID OF LEGISLATION, THE ALLEGED BIGTIME ONION AND VEGETABLE SMUGGLING SYNDICATES IN THE COUNTRY”

have considered the same and thus far conducted three (3) public hearings and seven (7) technical working group meetings, in aid of legislation, regarding the smuggling problem, which was participated in by the concerned government agencies, anti-smuggling units, industry representatives and other affected sectors.

After a careful scrutiny of all the resolutions submitted and evaluation of all pertinent testimonies and documents gathered during the hearings, the Committees have the honor to submit the results thereof to the Senate recommending the

adoption of its findings and interim recommendations and the consideration of the attached bill by the appropriate committee.

I. Introduction

A. Smuggling As An Impediment to Economic Growth

The Philippine government faces a major policy challenge today in the management of its huge fiscal deficit, unsustainable debt stock and the serious threat of a fiscal crisis. The Department of Finance estimated that as of end-2003:

- National Government Debt had already reached 3.344 trillion pesos or 75.4% of the country's GDP;
- Public Sector Debt was at 137.5% of GDP;
- Consolidated Public Sector Deficit was at 234.851 billion pesos or 5.5% of GDP;
- National Government's Fiscal Deficit had reached 199.9 billion pesos or 4.6% of GDP.

While we have so far been able to head off a full-blown crisis, the fiscal deficit continues to put a huge strain on our economy in terms of steady decline in investments, increasing unemployment rates and lower expenditures for socio-economic services. To avoid long-term problems for the country, the government has developed a plan, which targets to balance the national budget within six years, reduce the Consolidated Public Sector Deficit to 3% and National Government Deficit to 0% in 2010 and finally, to reduce National Government Debt and Public Sector Debt to 58% and 90% respectively of GDP by 2010.¹ The government seeks to achieve these targets through the enactment of both administrative and legislative revenue generating measures and other fiscal reform strategies.

¹ The President's Report, A Roadmap to Fiscal Strength for Fighting Poverty (2004).

Strengthening the government's anti-smuggling drive has been identified as one of the necessary strategies to generate much needed government revenues. While the smuggling of trade commodities has been a longstanding national problem, it has become today, more than any other time in Philippine history, a burden and threat to our economy, in light of the country's present financial and economic situation. The huge discrepancy between the value of the country's imports as reported by the National Statistics Office (*see Table 1*) and the value of our exports as reported by the country's trading partners (*see Table 2*) gives some indication as to the value of commodities that may be entering the country undeclared and without the payment of proper duties each year (*see Table 3*).²

Table 1. Philippine Imports
(Figures in Millions of US\$)

	2001	2002	2003
USA	6,411	7,286	7,400
Japan	6,633	7,233	7,640
Korea	2,082	2,754	2,400
Singapore	2,072	2,311	2,542
Hongkong, China	1,335	1,583	1,601
China	975	1,252	1,797
Iran	758	433	593
Malaysia	1,080	1,293	1,359
Thailand	925	1,052	1,361
TOTAL	22,271	25,197	26,693

Source: *Philippine Statistical Yearbook 2004, NSO Publication*

Table 2. Exports to the Philippines by Trading Partners
(Figures in Millions of US\$)

	2001	2002	2003
USA	7,664	7,270	7,992
Japan	8,188	8,457	9,011
Korea	2,535	2,950	2,975
Singapore	3,085	3,039	3,236

² The Department of Finance points out that the discrepancies cannot be automatically attributed to smuggling inasmuch as there are differences in classification concepts and detail, time, or recording, valuation, coverage, and processing errors.

	2001	2002	2003
Hongkong, China	1,926	2,308	2,227
China	1,622	2,042	3,094
Iran	690	394	539
Malaysia	1,288	1,335	1,359
Thailand	1,156	1,274	1,623
TOTAL	28,154	29,069	32,056

Source: *Direction of Trade Statistics Yearbook 2004, IMF*

Table 3. Discrepancy Between Trading Partner's Data and Phil. Data
(Figures in Millions of US\$)

	2001	2002	2003
USA	1,254	(16)	592
Japan	1,555	1,224	1,371
Korea	453	196	575
Singapore	1,013	728	694
Hongkong, China	591	725	626
China	647	790	1,297
Iran	(68)	(39)	(54)
Malaysia	208	42	0
Thailand	231	222	262
TOTAL	5,884	3,872	5,363

In 2003, the total discrepancy amounted to \$5.363 Billion. Assuming an average four percent duty and ten percent VAT rate on imported goods, government's revenue losses from the un-captured alone could have reached about \$750 Million or over ₱40 Billion in the same year. This amount is equivalent to half of the government's ₱80 Billion target from proposed revenue measures.

Reports on industry-based smuggling from local industry representatives³ illustrate the extent of damage caused by smuggling on our economy. A presentation from The Fair Trade Alliance (FTA) made the following allegations:⁴

³ The private sector-led Multi-Sectoral Council Against Smuggling was jointly convened in 2004 by the Federation of Philippine Industries (FPI), the Fair Trade Alliance (FTA) and the *Alyansa Agrikultura*.
⁴ TAÑADA, WIGBERTO E. (2004). FAIR TRADE ALLIANCE, SMUGGLING AND THE ECONOMY.

- Footwear Industry. Government is losing ₱7.69 Billion in revenues from 1997 to 2002 from the technical smuggling (undervaluation) of shoe imports.
- Automotive Industry. Smuggling of second-hand vehicles is one of the major factors for the lay-off of almost 7,000 and 2,800 employees in the local automotive assembly industry during the 1997-1999 and 2000-2002 periods, respectively.
- Vegetable Industry. At least one million kilos or one-eighth (1/8) of vegetable imports are misdeclared annually, adversely affecting 400,000 farmers in the Cordilleras and other regions.
- Petrochemical Industry. Seventy percent (70%) of petrochemicals stored in custom bonded warehouses (CBWs) are illegal importations. Revenue loss to government from smuggled imported resins alone amounts to an estimated ₱1.58 Billion per year.
- Ceramic Tiles Industry. Ninety percent (90%) of tile imports from China are smuggled into the country. Overall, the government lost ₱314 Million in safeguard duties, ₱66 Million in custom duties and another ₱66 Million in VAT or a grand total of ₱446 Million from ceramic tile imports in 2003 alone.
- Sugar Industry. Due to misclassification, the government loses some ₱650 Million of revenues from tariff duties on importation of sugar coming mainly from Singapore and Thailand.
- Garments and Textile Industry. Hundreds of containers of used clothing (or "ukay-ukay") are smuggled into the country each year. Smugglers of used clothing are earning an estimated ₱6.4 Million to ₱9.6 Million for every 40-footer container van of clothing and are paying no taxes for it.



By robbing the country of much needed government revenues, the country's unabated smuggling problem serves as a huge obstacle to the country's fiscal and economic recovery. Smuggling further hurts the economy by creating major distortions in market prices, affecting the trading of goods, at great cost to local industries and legitimate businesses, particularly Small and Medium-Scale Enterprises in the country. Smuggling threatens not only the businesses of Filipino producers, manufacturers and retailers but also the livelihood of hundreds of thousands of Filipino workers and families who depend on local industries for employment.

Unfortunately, smuggling has become a standard feature of trade and commerce in the Philippines. Inadequate policies and lax systems and procedures for the entry of imported goods into the country have all served to encourage the low risk, high return illegal activity by big-smuggling syndicates. Despite the vast magnitude and value of smuggled goods that are believed to be entering the country every day, not a single big-time smuggler has been successfully charged and prosecuted in the last five years.

As advocated by this representation, the National Anti-Smuggling Task Force (NASTF) was reactivated last year to lead the government's anti-smuggling efforts. The Bureau of Customs (BOC) and other concerned government agencies were also strongly challenged to undertake organizational reforms and show more vigilance in their anti-smuggling operations. To optimize gains from these developments, it is now urgent and imperative that proper measures and procedures be established to discourage smuggling by increasing the risks and difficulty of engaging in this illegal activity.



B. Types of Smuggling

Smuggling is the clandestine importation or exportation of prohibited goods, or the evasion of customs duties on legal goods that are liable to duty. It is the execution of risk-taking strategies prompted by a desire to avoid paying taxes or to generate money from the sale of clandestinely imported goods.

There are two types of smuggling: *outright smuggling* and *technical smuggling*. Outright smuggling involves importations released without the required import entries, and not levied any duties and taxes. On the other hand, technical smuggling refers to the non-payment of the correct duties and taxes, which may be done in three ways. *First*, an importer may undervalue his goods, and then pay taxes and duties that are much lower than what should have been imposed. This is called undervaluation. *Second*, an importer may declare on his import entry that he is bringing in articles that are not identical to those that were actually imported. For instance, the importer may declare in his import entry that he is bringing in garments, when in fact he is shipping in tires. This method is called misdeclaration. *Third*, an importer may declare that he is shipping in merchandise that is found under the same chapter heading as the merchandise that he is actually importing. For instance, the importer may declare that he is shipping in slippers when in fact his shipment consists of leather shoes. This is called misclassification.

Section 2503 of the Tariff and Customs Code of the Philippines (TCCP) provides that when the undervaluation, misdescription, misclassification, or misdeclaration in the import entry is intentional, the importer shall be subject to penalties ranging from a fine of not less than fifty pesos (P50) but not more than ten

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thousand pesos (P10,000) and imprisonment of not less than five (5) days but not more than twelve (12) years.

Recognizing that there is an urgent need to curb the worsening problem of smuggling, the following Senate Resolutions were filed:

Senate Resolution No.	Date Filed	Title	Author(s)
1. SRN 67	31 August 2004	A Resolution Directing the Senate Committee on Agriculture and Food to Investigate, in aid of Legislation, the Alleged Unregulated Influx of Imported Vegetables into the Philippines	Ejercito-Estrada, L.
2. SRN 68	31 August 2004	A Resolution Directing the Committees on Trade and Commerce; and Economic Affairs to Conduct a Joint Investigation, in aid of Legislation, on the Problem of Unabated Smuggling of Goods into the Country to the Detriment of Local Producers, Manufacturers, Retailers, and Consumers and the Philippine Economy in General, with the Goal of Recommending Measures to End the Problem of Smuggling in the Country	Roxas
3. SRN 97	21 September 2004	A Resolution Urging the Office of the President to Reconstitute the Office of the Anti-Smuggling Task Force (NASTF), Anti-Smuggling Intelligence and Information Center (ASIIC), as well as the Cabinet Oversight Committee on Anti-Smuggling (COCAS), in Light of the Unabated Illegal Entry of Various Commercial Goods into the Country, which has Adversely Affected both the Business and Public Sector, In Effect Further Damaging the National Economy"	Roxas Magsaysay, Jr. Gordon Lim Enrile
4. SRN 119	26 October 2004	A Resolution Directing the Appropriate Senate Committee to Investigate, In Aid of Legislation, the Alleged Big-Time Onion and Vegetable Smuggling Syndicates in the Country	Pimentel, Jr.

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Three (3) hearings were jointly conducted by the Committees on Trade and Commerce and on Economic Affairs on 13 September 2004, 25 October 2004, and 08 December 2004. Seven (7) Technical Working Group (TWG) meetings were subsequently conducted by said committees on the following dates:

- a) 04 November 2004
- b) 13 January 2005
- c) 27 January 2005
- d) 17 February 2005
- e) 10 March 2005
- f) 14 April 2005
- g) 28 April 2005

II. Major Issues Identified by the Committees

During the course of the hearings and TWG meetings, the Committees were able to identify the following major issues:

A. Availability of IFMs and Bills of Lading

The Inward Foreign Manifest (IFM) is required by customs authorities when international vessels call at Philippine ports to unload their cargo. It is a document based on a set customs format indicating thereon the description of the goods in each shipment.

The importance of IFMs in the efforts to counter smuggling cannot be emphasized enough. With IFMs, the BOC can properly assess the value of imported articles entering Philippine ports, and thereby collect the correct duties and taxes.

Ideally, IFMs should be readily available to an auditing body and the public in general so that there will be proper monitoring of the importer's declaration and the valuation process of the BOC and to ensure the veracity of information on the volume

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of import entries. However, according to the Federation of Philippine Industries (FPI), the BOC treats IFMs as private and confidential instruments. FPI claimed that in the past, they repeatedly requested the Bureau for copies of IFMs but these requests were allegedly refused.

When the National Anti-Smuggling Task Force (NASTF) was created, access to IFMs by other government agencies and the private sector became easier. Hence, local industries concerned about the undue competition caused by illegally imported goods were provided information on how these goods entered the country, which made industry commodity experts more effective in raising government revenues. The NASTF was also given an idea of how imported articles enter local markets without paying the proper duties and taxes.

At present, IFMs are transmitted electronically to Philippine customs authorities prior to the vessels' arrival at the port. The Association of International Shipping Lines (AISL) disclosed that it takes a shipping vessel twenty-four (24) to twenty-eight (28) hours of travel time to the Philippines from the nearest foreign port. The AISL reported that their vessels electronically submit to customs authorities their IFMs six (6) to twelve (12) hours prior to the vessels' arrival at port.⁵ This is the current practice, which however has not been set into law.

There are many benefits of electronically transmitting IFMs prior to the arrival of the vessel at port. These benefits include quicker processing of cargo information by customs authorities resulting in quicker vessel turn-around; a more

⁵ *Amendments to the Tariff and Customs Code of the Philippines, 2005: Technical Working Group on SR Nos. 67, 68, 97, 119 before the joint Committees on Trade and Commerce, and Economic Affairs, 13th Congress [hereinafter TWGs] (March 10, 2005) (statement of Corazon S. Bautista, Assistant General Manager, AISL).*



consistent approach to cargo and vessel reporting for shipping lines; increased confidence in the system of reporting and timeliness of responses for importers and exporters; and flow-on benefits for consumers in the form of lower cost of goods.⁶

Another document which plays an important role in the fight against smuggling is the *bill of lading*. This document also contains valuable information about importation since it has the freight charges and accurate weight readings to check the importer's declaration of quantity, valuable factors in the computation of duties and charges.

Like the IFMs, bills of lading were also treated by the BOC as private and confidential documents and were not made available to the public, or even to an auditing body. The availability of this document to the public will bring transparency to the imported goods, thus avoiding smuggling.

It was verified by the BOC during the TWG meetings that there were instances when freight charges were not stated in the bills of lading. The Bureau lacks a system through which it can coordinate with shipping lines to ensure that freight charges are properly stated in the bills of lading, not only for shipments of fruits and vegetables, but also for luxury cars, for which there is no standard formula for computing freight charges.

B. Customs Bonded Warehouses (CBWs)

(1) CBWs as Conduits for Smuggling

Generally, a customs bonded warehouse (CBW) is defined as a warehouse authorized by the BOC to receive duty-free merchandise. Articles stored in CBWs

⁶ APEC TRANSPORTATION WORKING GROUP, ELECTRONIC PORTS MANIFEST PROJECT 5 (2002).

are those imported primarily for further processing or transformation into finished products that are then exported from the Philippines to other countries.

Over the years, it is believed that CBWs have increasingly become conduits for smuggling activities. This is done by importers declaring their shipments for warehousing so that no taxes or duties are levied upon them. Eventually, the articles received by the bonded warehouses end up in the local markets, competing with locally-manufactured products. Local manufacturers stand to lose in this arrangement since more often than not, prices of smuggled goods are much lower than those produced by local manufacturers. Consumers will naturally choose the lower-priced smuggled goods.

(2) Guarding the CBWs

At present, customs guards are not usually assigned to watch over CBWs. There are no personnel from the Customs Intelligence and Investigation Service (CIIS) or the Enforcement and Security Service (ESS) assigned to CBWs unless the Commissioner so orders. More often than not, only a warehouseman is assigned to a CBW. Under the Salary Standardization Law, the salary scale for the position of warehouseman ranges from salary grades eleven (11) to thirteen (13).⁷ Their very low salaries may be one factor why it is easy to withdraw articles from CBWs without paying taxes and duties. For a few extra pesos, a warehouseman can simply turn his back and ignore the surreptitious withdrawal of articles. It must also be noted that although several CBWs have been shut down recently for non-compliance with customs laws, no warehouseman has ever been dismissed from service.

⁷ *TWGs, supra* note 5 (April 14, 2005) (statement of Nestorio B. Gualberto, Director, Bureau of Customs).

(3) Making CBWs Liable

It is also important to take into consideration the capitalization requirements of CBWs. There are existing CBWs with an authorized capital stock of ₱10 Million pesos and a paid-up capital of ₱1 Million. However, these CBWs store articles with an appraised value of more than ₱50 Million. Thus, the corporations' assets would not be enough to answer for the unpaid duties and taxes due from the withdrawn articles. It is precisely for this reason that CBWs are required to post a bond as trustee of the goods, so that the bonding companies become answerable for their fiduciary liabilities. It has been reported, however, that the actual liabilities of these CBWs exceed the total assets of these bonding companies, which require a thorough investigation of this structure because it leaves the government with no civil recourse.

In addition, The Tariff and Customs Code does not require the disclosure of the identities of the incorporators and shareholders of the corporations owning the CBWs. Hence, in the event it is discovered that the CBW is engaged in smuggling, the government can only suspend or terminate the operation of the CBW. It cannot immediately run after the incorporators or members of the board of directors since the BOC never ascertained their identities in the first place.

Finally, CBWs must be made industry-specific to capture the interest of industry associations in auditing and closely monitoring the bonded warehouses and they must be limited to a reasonable number that can be strictly supervised by the BOC.



C. Valuation Process by the BOC

(1) The Six Methods of Valuation Under the WTO Agreement⁸

Another important tool to combat smuggling is knowing how the customs valuation method works. Customs valuation is a procedure applied to determine the customs value of the imported goods. If the rate of duty is *ad valorem*, as is the case in the Philippines, the customs value is an important tool to determine the duty to be paid on an imported good.

Article VII of the General Agreement on Tariffs and Trade (GATT) laid down the general principles for an international system of valuation. This article provides that the value of imported merchandise for customs purposes should be based on the actual value of said merchandise, or of like merchandise, and should not be based on arbitrary or fictitious values. Hence, the customs valuation shall, except in specified circumstances be based on the actual price of the goods to be valued, which is generally shown in the invoice. The price on the invoice, plus certain allowable adjustments, is the transaction value, which is the first and most important method of valuation.

For cases where there is no transaction value, or where the transaction value is not acceptable as the customs value because the price has been distorted as a result of certain conditions, the WTO Agreement lays down five (5) other methods of customs valuation, to be applied in the prescribed hierarchical order.

The six (6) methods of valuation are as follows:

Method 1: Transaction value

Method 2: Transaction value of identical goods

⁸ Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994. http://www.wto.org/english/docs_e/legal_e/20-val.doc



Method 3: Transaction value of similar goods
Method 4: Deductive method
Method 5: Computed method
Method 6: Fall-back method

Transaction value, in simple terms, is the total payment made by the buyer to the seller for the imported goods. This includes all payments made by the buyer to the seller as conditions of the sale. It also includes all payments made by the buyer to a third party to satisfy an obligation of the seller.

Certain conditions must first be fulfilled before the first method of valuation may be employed. *First*, there must be evidence of a sale for export to the country of importation. This may be a commercial invoice, a contract of sale, or a purchase order. *Second*, there must be no restriction on the disposition or use of the imported merchandise other than restrictions which are either imposed by the country of importation, limited to the geographic area in which the goods may be sold, or do not substantially affect the value of the goods. *Third*, the sale or price must not be subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued. *Fourth*, no part of the proceeds of any subsequent resale, disposal, or the use of the goods by the buyer will accrue directly or indirectly to the seller. *Fifth*, sufficient information must be provided by the importer to enable customs authorities to make adjustments as to the price paid or payable. Such information may be how much were the commissions paid, how much were the packing and container costs and charges, or the cost of transport, insurance and related charges up to the place of importation. *Finally*, the buyer and the seller must not be related, and even if they are, the importer must prove that the relationship did not influence the price of the merchandise.

If customs authorities find that the transaction value presented by the importer is not acceptable, then they may use the other methods of valuation.

Method 2, transaction value of identical goods, is the transaction value of goods, which are the same in all respects including physical characteristics, quality, and reputation, produced in the same country as the goods being valued, and by the same producer as the goods being valued. For this method to be used, the goods must be sold for export to the same country of importation as the goods being valued. The goods must also be exported at or about the same time as the goods being valued.

Under Method 3, the transaction value of similar goods is calculated based on goods, which closely resemble the goods being valued in terms of component materials and characteristics, which are capable of performing the same functions and are commercially interchangeable with the goods being valued, and which are produced in the same country by the same producer of the goods being valued. For this method to be used, the similar goods must be sold to the same country of importation as the goods being valued.

When the customs value cannot be determined on the basis of the transaction value of the imported goods or identical or similar goods, then customs authorities must resort to the other methods of valuation. The customs value may be determined through Method 4 (deductive value). The basis shall now be the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in the country of importation. Again, customs authorities must make sure that the buyer and seller are not related. Also, the sale must take place at or about the time of importation of the goods being valued. If no sale took

place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued.

Method 5 (computed value), the most complicated method, determines the customs value on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind. The local industry and agencies of the Department of Science and Technology can provide enough information to use this method effectively and with less difficulty.

Finally, when the customs value cannot be determined under any of the previous methods, customs authorities may use Method 6, the fall-back method. Under this, the customs value may be determined using reasonable means consistent with the principles and general provisions of the Agreement and Article VII of GATT, and on the basis of data available in the country of importation. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application.

(2) How Does the BOC Use the Six Methods of Valuation?

In its report submitted to the Committee on 03 May 2005, the BOC revealed that out of the 644,144 shipments that entered Philippine ports⁹ in 2004, they used Method 1 or the transaction value method for the determination of the customs value of 641,374 entries. Method 2 was used on 1,052 entries; Method 3 on 974 entries; Method 4 on 21 entries; Method 5 on 1 entry; and Method 6 on 445 entries. (*see Table 4*)

⁹ Batangas, Cagayan de Oro, Cebu, Mactan, Clark, Dadiangas, Davao, Iligan, Iloilo, Manila International Container Port (MICP), Ninoy Aquino International Airport (NAIA), Manila, San Fernando, Subic, and Surigao.



Table 4. Year 2004

Method Used	Number of Entries	Percentage to Total
1. Transaction value	641,374	99.570%
2. Transaction value of identical goods	1,052	0.163%
3. Transaction value of similar goods	974	0.151%
4. Deductive method	21	0.003%
5. Computed method	1	0.000%
6. Fall-back method	445	0.069%
TOTAL	644,144	100%

Table 5 shows the methods of valuation used by the BOC on the 141,809 shipments which entered Philippine ports from January to March 2005:

Table 5. Year 2005

Method Used	Number of Entries	Percentage to Total
1. Transaction value	141,645	99.884%
2. Transaction value of identical goods	233	0.164%
3. Transaction value of similar goods	146	0.103%
4. Deductive method	4	0.003%
5. Computed method	2	0.000%
6. Fall-back method	79	0.056%
TOTAL	141,809	100%

It must be pointed out that the BOC used Method 1 to determine the customs value of entries into Philippine ports 99.570% of the time for the year 2004, and 99.884% of the time for the first part of the year 2005. Again, it is important to remember that the customs valuation based on the transaction value method largely relies on documentary input from the importer. Hence, from the BOC report, it may be assumed that more often than not, the BOC relies on the documents presented to them by the importers, rarely questioning the veracity of these documents and employing other methods of valuation to ascertain the real customs value of the imported merchandise.

The lack of an updated valuation library may also account for the constant use of Method 1 in determining the real customs value. Considering that valuation is the

heart of customs, and under-valuation is the most common practice of technical smuggling, it is imperative for the Bureau of Customs to prioritize the upgrading and maintenance of a web-based valuation library accessible to the public. This will facilitate the processing of imports and exports, prevent undue harassment of traders, and enable the private sector to participate in updating these information.

D. Freeports and Ecozones

(1) Capitalization Requirements of Locators

At present, locators are not required a minimum capital amount to set up their operations in freeports and ecozones.¹⁰ A locator therefore can bring in hundreds of millions of pesos worth of goods even though its authorized capital stock is not commensurate to the value of its importations. Therefore, when the locator commits violations under the Tariff and Customs Code, the government will have difficulty in making the corporation liable since its assets alone cannot cover even half of the total value of its importations.

(2) Coordination and Harmonization of Policies with the BOC

It is also noted that freeport and ecozone authorities often have policies on certain important issues that are inconsistent with the policies of the BOC.

For instance, under Republic Act No. 4653, it is unlawful for any person, association or corporation to introduce into any point in the Philippines textile articles commonly known as used clothing and rags. This law, which took effect in 1966, has not yet been repealed. The Philippine Economic Zones Authority (PEZA) and the Clark Development Corporation (CDC) submitted to the Committees their

¹⁰ TWGs, *supra* note 5 (March 10, 2005) (statement of Mr. Ronnie Yambao, SBMA).



position that they no longer allow the registration of locators whose proposed activity will involve the importation, processing, and re-exportation of used clothing. The Subic Bay Metropolitan Authority (SBMA) did not issue a similar categorical statement. The BOC, however, submitted its position that the entry of used clothing into export processing zones and special economic zones cannot be deemed as importation in the strictest sense. According to the Bureau, the charters of the PEZA, EPZA, and the Subic Special Economic Zones provide that these areas are considered to be outside customs territory. Hence, until and after the articles entered through these zones are declared under an Import Entry, the same are not considered to have technically entered the customs zone. However, if the underlying reason of Rep. Act No. 4653 to ban the entry of used clothing is for health and sanitation, then in the same spirit that environmental hazards are banned from landing inside the country, there is reason to prevent the entry of used clothing and rags into the Philippines.

Meanwhile, on the issue of right hand drive (RHD) vehicles, Republic Act No. 8506 prohibits the entry of these vehicles into the country. However, the SBMA holds on to its position that these vehicles may be legally imported and converted inside the Subic economic zone, it being a freeport. In fact, it issues import permits to allow the entry of these cars.¹¹ The BOC, on the other hand, has a different view on this matter. In Customs Memorandum Order 16-2005, the BOC enjoined vessels and other carriers from accepting RHD vehicles.

¹¹ *Amendments to the Tariff and Customs Code of the Philippines, 2005: Hearing on SR Nos. 67, 68, 97, 119 before the joint Committees on Trade and Commerce, and Economic Affairs, 13th Congress, V2[7], [hereinafter Hearings] (September 13, 2004) (statement of George Jereos, Commissioner, Bureau of Customs).*

The BOC and the authorities of freeports and ecozones should come up with a harmonized policy on these matters. The non-coordination of key government agencies on matters like these encourage the proliferation of smuggling through freeports and ecozones. Importers will have the opportunity to take advantage of the confusion to smuggle in goods that are not supposed to be allowed entry in the Philippines in the first place.

(3) Oil Pipeline Between Subic and Clark

Upon the Committees' inquiry, the CDC and the SBMA reported that there is an oil pipeline connecting Clark and Subic that is still operational. The pipeline is a tripartite venture agreement among SBMA, CDC, and a company called the Coastal Petroleum Depot and Storage Corporation and is being maintained by the last. A bring-in permit from the CDC is necessary for fuel transfers from Subic to Clark. Allegedly, these fuel transfers are closely monitored by the BOC on a twenty-four (24) hour basis. No taxes, however, are being collected from Subic and Clark for the use of this pipeline.

There should be closer monitoring on the part of the BOC on the oil importation, exportation, and distribution of the locators in Subic and Clark. There should likewise be closer monitoring by the BOC of the oil consumption within Subic and Clark to see if the oil users in these zones were paying the proper taxes or if some of the oil found its way for consumption outside these zones.

The operation of the pipeline and the bringing in of oil into Clark from Subic should likewise be assessed in light of the ruling rendered by the Supreme Court,

which essentially states that tax and duty exemptions granted to Clark, John Hay, and other similar economic zones are invalid.¹²

(4) SBMA IS Project: Implementing the Asycuda (Automated System for Customs Data)

The SBMA IS Project is a World Bank-financed institutional strengthening project undertaken from the period of May to August 2001. The weaknesses and trade inefficiencies of the SBMA were properly identified in this diagnostic study and specific recommendations were made on the legal, operational, and procedural frameworks of the SBMA and the BOC. Phase I of the project was the diagnostic study; Phase II involves the design of all the new systems that will be put in place; and Phase III involves its actual implementation.

According to the SBMA, they are now in the implementation phase, having gone through the diagnostic and design phases.¹³ Upon query from the Committees, however, it was revealed that the SBMA has not been able to take up many of the recommendations made in the IS project. There is no definite schedule for the completion of the IS project recommendations.

E. Inadequate Human Resources and Salaries in the Bureau of Customs

The Bureau of Customs (BOC) has a manpower complement of 5,842 personnel who are tasked to man fifteen (15) collection districts all over the country. This complement is inadequate for this institution to carry out and discharge its duties and responsibilities under the Tariff and Customs Code.

¹² *John Hay People's Alternative Coalition v. Victor Lim*, G.R. No. 119775, 14 October 2003 and En Banc Resolution on the Motion for Reconsideration, G.R. No. 119775, 29 March 2005.

¹³ *TWCs, supra note 5* (January 27, 2005) (statement of Lea Alcaraz, Export and Import Division Chief, SBMA).

During the course of the hearings and TWG meetings, it was observed that due to the inadequate number of BOC's personnel, several key units are unable to properly perform their mandate at a pace quick and methodical enough to curb the smuggling problem. To illustrate this problem, only 239 CBW customs guards are tasked to watch over and monitor thousands of transshipment cargoes coming in and out of 1,400 CBWs. The Post Entry Audit Group only has a handful of personnel to exhaustively audit almost 700,000 import entries filed annually. The Warehousing and Monitoring Unit (WAMU) has only fourteen (14) people to handle the monitoring and audit of cargo movement in the 1,400 CBWs, excluding those operating in the Subic freeport and other economic zones. Even the Auction and Cargo Disposal Division of both the Port of Manila (POM) and the Manila International Container Port (MICP) suffer from personnel deficiency.

The government's present direction is towards streamlining the bureaucracy in the next five years. Administrative Order 103, which took effect in December 2004, effectively prohibits the hiring of new personnel for the next five (5) years. There are likewise other tools with the primary goal of downsizing the BOC, such as natural attrition through the retirement of personnel and other punitive provisions in the Lateral Attrition Act (Republic Act No. 9335). Memorandum Order No. 366 likewise mandates that there should, at the very least, be a ten percent (10%) reduction of the BOC's employee complement by 2009. Moreover, it is perceived that the application of information systems technology, particularly the P500 Million-worth Information



Technology Modernization Program of the BOC, will greatly reduce costs of personnel services.¹⁴

While we wait for the benefits of automation to kick in, the BOC should conduct a comprehensive job analysis and audit actual duties and responsibilities of its personnel. The Bureau should likewise start realigning staffing patterns with a bias towards those units that will increase probability of detecting smuggling.

F. Highly Politicized Bureaucracy

It was noted during the hearings and TWG meetings that the Bureau of Customs (BOC) is guided only by civil service laws in the hiring and entry of its new personnel. However, it should be kept in mind that taxation is a very serious business and represents the lifeblood of our government. In this field, we need men and women who are highly motivated, skilled, and nationalistic. We need people who truly know the importance of the revenue service. The creation of a Revenue Service Academy, akin to the present Foreign Service Institute, for the Bureau of Customs and the Bureau of Internal Revenue would be a step towards the right direction in getting the best men and women to handle our revenue service.

G. Outdated Penalties

The penalties imposed for violations under the Tariff and Customs Code are already outdated. These penalties are not deterrence enough for smugglers and rogue employees of the Bureau of Customs. A new set of penalties is recommended by the

¹⁴ TWGs, *supra* note 5 (January 27, 2005) (statement of Alexander Arevalo, Deputy Commissioner, Bureau of Customs).

Committees to reflect the gravity of the effects of smuggling on our national economy.

H. Audit Sustainability

Under the present law, the Commission on Audit (COA) is mandated to examine, audit, and settle all accounts pertaining to the revenue and receipts of; and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters. With respect to the BOC, it is the COA's task to conduct a comprehensive audit of all of its accounts and transactions pertaining to its revenue and receipts, expenditures, and uses of funds and property. However, with numerous government agencies to monitor, it comes as no surprise that COA can no longer conduct an in-depth investigation of the BOC's transactions. At present, the prevailing audit rate is 1.5 percent, which is low when compared with other developing countries.¹⁵ The lack of a concentrated, effective and continuous audit only leads to an increased inclination to engage in smuggling and other illegal activities since the chances of being caught are drastically reduced.

Thus, faced with this current situation, the Committees are proposing the creation of the Audit and Transparency Group (ATG), to be headed by a Deputy Commissioner directly appointed by the President. The Deputy Commissioner for the Audit and Transparency shall have the following general authority:

¹⁵ MANASAN, ROSARIO G. (2000) *Improving Tax Administration: A New View from the Theory of Tax Evasion in a Corrupt Regime*, in PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES POLICY NOTES, 2000-11.

- a. Conduct regular and comprehensive financial and performance audit of the whole bureau and its agencies and the programs they implement.
- b. Cause the conduct of an independent third-party audit by a private institution of the bureau and its agencies.
- c. Formulate and recommend to the Commissioner policies to solve problems identified during the audit and investigations.
- d. Conduct investigations to determine fraudulent and graft and corrupt practices acts, and recommend to the Ombudsman the filing of criminal actions, and to the Commissioner the imposition of administrative sanctions.
- e. Issue subpoena *duces tecum* and *ad testificandum*.
- f. Submit an annual report of the result of its audit and investigations, which report shall be made available to the public through electronic and paper copies.

The creation of the ATG will be an effective way to increase the risks associated with smuggling activities in the country. Working alongside the Commission on Audit (COA), the ATG can now provide a sustainable counter-checking method wherein the revenues of income-generating agencies can be thoroughly examined and scrutinized.

Because the ATG will focus solely on the BOC, the latter will now be able to concentrate all its resources on making sure that programs, operations and activities of all BOC departments are proceeding smoothly and that no fraud, deceit, abuse, or mismanagement are being committed by its officials.

It is important that the ATG be given enough personnel for it to be able to discharge its mandate. These personnel may be sourced from the other departments of the BOC.

All in all, the creation of the ATG is the most effective way of increasing the risks associated with smuggling. It will likewise increase the risks associated with other illegal activities, such as collusions between government customs officials and smugglers. Increasing these risks will, in the end, lead towards the eradication of smuggling.

III. Recommendations

Based on the foregoing findings, the Committees propose the following courses of action:

A. Executive

The Committees urge the strengthening of the National Anti-Smuggling Task Force (NASTF) through funding that will allow them to fully computerize their operations and monitoring of importation and exportation of goods and the addition of personnel to facilitate immediate response to reported smuggling activities.

B. Administrative

The Committees urge the Bureau of Customs to undertake measures to further enhance its performance and anti-smuggling activities.

In an effort to promote full transparency to prevent smuggling as well as curb corruption, the BOC should maintain an active website where all public documents and information such as IFMs, Bills of Lading, and Import Declarations can be accessed by the public to monitor movement of goods in and out of the country. The Bureau should exert all efforts to constantly update this website.

The Bureau is encouraged to establish a system through which it can coordinate with shipping lines to ensure that freight charges are properly stated in the

bills of lading, especially for products for which there are no standard formula for computing freight charges.

Since reports showed that the Customs Bonded Warehouses (CBWs) are being made conduits for smuggling, CBWs need to be guarded strictly, and limited to industry-specific units of a number that the BOC can reasonably handle. The Bureau is urged to arrange for regular personnel from the Customs Intelligence and Investigation Service (CIIS) or the Enforcement and Security Service (ESS) to be assigned to CBWs.

It may also be helpful if the Bureau can undertake a comprehensive independent audit, which shall cover its processes, structure, risk assessment, and such other factors that affect the transparent, effective and efficient functioning of the Bureau.

C. Legislative

With the end in mind of curtailing smuggling, the Committees submit the attached bill, to be referred to the appropriate committee, embodying the principles of transparency, accountability and efficiency. The features of the bill fall under three categories of intervention: *Preventive*, or measures designed to keep errors or regularities from occurring; *Detective*, or measures to discover errors and irregularities that have already occurred; and *Corrective*, or measures designed to provide a remedy for detected errors or irregularities.

1) Preventive

1. Creating a new Deputy Commissioner for the Audit and Transparency Group.
2. Appointment of the Deputy Commissioners by the President, through the recommendation of the Commissioner; except for the Deputy Commissioner for Audit and Transparency who shall be appointed directly by the President.

3. The Deputy Commissioner for the Audit and Transparency shall have the following general authority:
- a. Conduct regular and comprehensive financial and performance audit of the whole bureau and its agencies and the programs they implement (preventive and detective)
 - b. Cause the conduct of an independent third-party audit by a private institution of the bureau and its agencies (preventive and detective)
 - c. Formulate and recommend to the Commissioner policies to solve problems identified during the audit and investigations (corrective)
 - d. Conduct investigations to determine fraudulent and graft and corrupt practices acts, and recommend to the Ombudsman the filing of criminal actions, and to the Commissioner the imposition of administrative sanctions (corrective)
 - e. Issue subpoena *duces tecum* and *ad testificandum* (corrective)
 - f. Submit an annual report of the result of its audit and investigations, which report shall be made available to the public through electronic and paper copies (preventive)
4. Making available and accessible to the Deputy Commissioner for Audit and Transparency the import/export entries at all times.
5. Mandating the electronic transmission of copies of inward foreign manifests (IFMs) prior to the arrival of the vessel and posting these in the BOC website. (preventive, detective and corrective)
6. Conducting regular audit of customs bonded warehouses in accordance with the Philippine Institute of Certified Public Accountants' auditing standards, which audit shall be automatically reviewed by the Deputy Commissioner for Audit and Transparency. (preventive and detective)

7. Updating the "valuation library" and posting the same in the BOC website, and requiring the customs officer to swear under oath that he used the valuation library in his assessments.
8. Furnishing the Deputy Commissioner for Audit and Transparency copies of the warehousing entries, and limiting the liquidation thereof to 30 days.

2) Detective

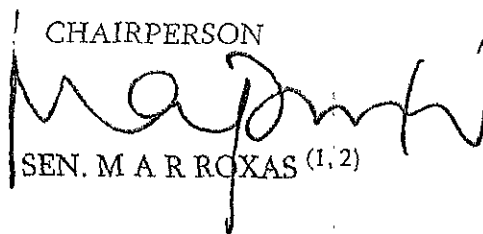
9. Mandating that an inventory of goods in a CBW should be made available to the public, and giving industry groups the power to recommend to the Collector of Customs the closure of CBWs which violate customs laws.
10. Conducting regular and independent audit of transactions.

3) Corrective

11. Expanding the definition of "abandoned goods", making stricter the rules on disposition of abandoned goods by explicitly prohibiting settlement or compromise.
12. Institutionalizing industry-specific customs bonded warehouse, and imposing additional requirements for the application for their operation, particularly on ownership identity and financial capacity.
13. Increasing the penalties for smuggling and other violations of the Code.

Respectfully submitted:

CHAIRPERSON



SEN. M A R ROXAS (1, 2)

-
1. Committee on Trade and Commerce
 2. Committee on Economic Affairs

VICE-CHAIRMEN.

W. Gordon

RODOLFO G. BIAZON
Committee on Economic Affairs

RICHARD "DICK" GORDON (2)
Committee on Trade & Commerce

MEMBERS:

SEN. JOKER ARROYO (2)

SEN. PIA S. CAYETANO (1)

SEN. RALPH G. RECTO (1)

SEN. RAMON REVILLA JR. (1,2)

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SEN. PANFILO M. LACSON (1)

SEN. M.A. "JAMBY" MADRIGAL (1,2)

with amendments

SEN. SERGIO OSMENA III (1,2)

EX-OFFICIO MEMBERS:

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President Pro-Tempore

FRANCIS N. BANGILINAN
Majority Leader

AQUILINO Q. PIMENTEL JR.
Minority Leader


HON. FRANKLIN M. DRILON
Senate President

1. Committee on Trade and Commerce
2. Committee on Economic Affairs

THIRTEENTH CONGRESS OF)
THE REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

5 NOV -7 P9:56

SENATE

RECEIVED BY: 

S. No. 2154

INTRODUCED BY THE MEMBERS OF THE COMMITTEES
ON TRADE AND COMMERCE AND ON ECONOMIC AFFAIRS

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:*

1 Section 1. *Short Title.* – This Act shall be known and cited as the “Anti-
2 Smuggling Act of 2005.”

3 Section 2. – Section 601 of the Tariff and Customs Code of the Philippines
4 (TCCP), as amended, is hereby further amended to read as follows:

5 “SEC. 601. *Chief Officials of the Bureau of Customs.* – The Bureau of Customs
6 shall have one chief and FIVE [four] assistant chiefs, to be known respectively as the
7 Commissioner of Customs (hereinafter known as the Commissioner) and FIVE (5)
8 Deputy Commissioners of Customs, each one to head (a) Customs Revenue and
9 Collection Monitoring Group; (b) Customs Assessment and Operations Coordinating
10 Group; (c) Intelligence and Enforcement Group; (d) Internal Administration Group;
11 AND (5) AUDIT AND TRANSPARENCY GROUP, who shall each receive an annual
12 compensation in accordance with the rates prescribed by existing law. The
13 Commissioner AND DEPUTY COMMISSIONER FOR AUDIT AND



1 TRANSPARENCY SHALL BE DIRECTLY APPOINTED BY THE PRESIDENT. THE
2 OTHER DEPUTY COMMISSIONERS SHALL BE APPOINTED BY THE PRESIDENT
3 OF THE PHILIPPINES BASED ON THE RECOMMENDATION OF THE
4 COMMISSIONER.

5 "In case of temporary and permanent vacancy, one of the Deputy
6 Commissioners shall be designated by the Secretary of Finance to act as a
7 Commissioner of Customs, until the incumbent Commissioner reassumes his duties or
8 the position is filled by permanent appointment."

9 Section 3. - Section 607 of the Tariff and Customs Code of the Philippines
10 (TCCP), as amended, is hereby further amended to read as follows:

11 "SEC. 607. *Annual Report of Commissioner.* - The annual report of the
12 Commissioner to the President shall, among other things, contain a compilation of
13 the (a) quantity and value of the articles imported into the Philippines and the
14 corresponding amount of customs duties, taxes and other charges assessed and
15 collected on imported articles itemized in accordance with the tariff headings and
16 subheadings as appearing in the liquidated customs entries provided for in this Code,
17 (b) percentage collection of the peso value of imports, (c) quantity and value of
18 conditionally-free importations, (d) customs valuation over and above letters of credit
19 opened, (e) quantity and value of tax-free imports, and (f) the quantity and value of
20 articles exported from the Philippines as well as the taxes and other charges assessed
21 and collected on them for the preceding year. THE DEPUTY COMMISSIONER FOR
22 AUDIT AND TRANSPARENCY SHALL REGULARLY FURNISH [C]copies of such
23 annual report [shall be furnished regularly] to the Department of Finance, Tariff
24 Commission, NEDA, Central Bank of the Philippines, Board of Investments,
25 Department of Budget, and other economic agencies of the government, on or before

1 December 30, of each year.

2 "For more scientific preparation of the annual report, the Commissioner shall
3 cause the computerization of the data contained in the liquidated entries filed with
4 the Bureau of Customs."

5 Section 4. – Section 609 of the TCCP, as amended, is hereby further amended
6 to read as follows:

7 "SEC. 609. *Commissioner to Furnish Copies of Collectors' Liquidated*
8 *Duplicates.* – The Commissioner shall regularly furnish the NEDA, the Central Bank
9 of the Philippines, the Tariff Commission, AND THE NATIONAL STATISTICS
10 OFFICE (NSO), BOTH ELECTRONIC AND PAPER COPIES of each of all customs
11 import/ export entries as filed with the Bureau of Customs. The Tariff Commission or
12 its duly authorized agents shall have access to and the right to copy all the customs
13 liquidated import entries and other documents appended thereto as finally filed in the
14 Commission on Audit. COPIES OF THE FOREGOING DOCUMENTS SHALL BE
15 MADE ACCESSIBLE AND AVAILABLE TO THE DEPUTY COMMISSIONER FOR
16 AUDIT AND TRANSPARENCY AT ALL TIMES."

17 Section 5. – Section 709 of the TCCP, as amended, is hereby further amended
18 to read as follows:

19 "SEC. 709. *Authority of the Collector to Remit Duties.* – A Collector shall have
20 discretionary authority to remit the assessment and collection of customs duties, taxes
21 and other charges when the aggregate amount of such duties, taxes, and other charges
22 is less than FIVE THOUSAND PESOS, and he may dispense with the seizure of
23 articles of less than FIVE THOUSAND PESOS in value except in cases of prohibited
24 importations of the habitual or the intentional violation of the tariff and customs
25 laws."

1 Section 6. – A new part shall be inserted starting with SECTION 713, after Section
2 712 of the TCCP, as amended, which shall read as follows:

3 "PART 3. – AUDIT, TRANSPARENCY AND ACCOUNTABILITY"

4 "SECTION 713. THE DEPUTY COMMISSIONER FOR AUDIT AND
5 TRANSPARENCY SHALL CONDUCT, IN COORDINATION WITH THE
6 COMMISSION ON AUDIT, A BUREAU-WIDE AUDIT ON THE OPERATIONAL
7 PROCESSES, COLLECTION AND FINANCIAL REPORTING, FISCAL AND
8 PERSONNEL PERFORMANCE, SYSTEM EFFICIENCY, INTERNAL CONTROL,
9 INFORMATION AND COMMUNICATION FLOW, FRAUDULENT AND ILLEGAL
10 PRACTICES, AND SUCH OTHER AREAS AS MAY BE NECESSARY FOR THE
11 EFFECTIVE OPERATION OF THE BUREAU AND ITS ATTACHED AGENCIES.

12 "SECTION 714. THE APPROPRIATIONS FOR THE BUREAU OF CUSTOMS
13 SHALL PROVIDE AN ITEM OF EXPENSE FOR AUDIT AS CONTEMPLATED
14 UNDER THIS ACT, INCLUDING A PROVISION FOR AN INDEPENDENT AUDIT
15 OF THE BUREAU BY A QUALIFIED PRIVATE COMPANY OR INSTITUTION,
16 WHICH SHALL BE CONDUCTED ANNUALLY, OR IN SUCH FREQUENCY AS
17 MAY BE DETERMINED BY THE DEPUTY COMMISSIONER FOR AUDIT AND
18 TRANSPARENCY UPON APPROVAL OF THE COMMISSIONER.

19 "SECTION 715. ON THE BASIS OF THE AUDIT CONDUCTED PURSUANT
20 TO THE PRECEDING SECTIONS, THE DEPUTY COMMISSIONER FOR AUDIT
21 AND TRANSPARENCY SHALL HAVE THE AUTHORITY TO FORMULATE AND
22 RECOMMEND POLICIES TO THE COMMISSIONER TO ADDRESS THE
23 IDENTIFIED PROBLEMS AND DEFICIENCIES. UNLESS THERE IS REASONABLE
24 DOUBT ON THE VALIDITY OF THE SAID AUDIT, THE RECOMMENDATIONS

1 SHALL HAVE PERSUASIVE WEIGHT AND SHALL BE PROMPTLY ACTED UPON
2 BY THE COMMISSIONER.

3 "THE DEPUTY COMMISSIONER SHALL LIKEWISE HAVE THE
4 AUTHORITY TO CONDUCT INVESTIGATIONS FOR THE PURPOSE OF
5 INITIATING PROSECUTION OF FRAUD AND OTHER GRAFT AND CORRUPT
6 PRACTICES IN THE BUREAU, AND SHALL RECOMMEND TO THE
7 OMBUDSMAN THE FILING OF APPROPRIATE CRIMINAL CASES AGAINST THE
8 ERRING PERSONNEL, AND TO THE COMMISSIONER THE IMPOSITION OF
9 ADMINISTRATIVE SANCTIONS.

10 "SECTION 716. IN THE CONDUCT OF ITS AUDIT AND
11 INVESTIGATIONS, THE DEPUTY COMMISSIONER OR THE PRIVATE
12 AUDITOR SHALL HAVE THE AUTHORITY TO REQUIRE THE PRODUCTION OF
13 DOCUMENTS AND REQUIRE BUREAU PERSONNEL TO RESPOND TO ITS
14 INQUIRIES. FOR THIS PURPOSE, IT MAY ISSUE *SUBPOENA DUCES TECUM*
15 AND *AD TESTIFICANDUM*, ANY PERSON WHO SHALL REFUSE TO ABIDE BY
16 THE *SUBPOENA* SO ISSUED MAY BE HELD LIABLE FOR CONTEMPT.

17 "SECTION 717. THE DEPUTY COMMISSIONER FOR AUDIT AND
18 TRANSPARENCY SHALL SUBMIT AN ANNUAL REPORT TO THE
19 COMMISSIONER, THE SECRETARY OF FINANCE, THE OFFICE OF THE
20 PRESIDENT, AND THE CONGRESS, STATING THE RESULT OF ITS INSPECTIONS
21 AND AUDITS. THE REPORT SHALL CONTAIN ALL THE NECESSARY DATA
22 WHICH LED TO ITS RECOMMENDATIONS AND FINDINGS, AND SHALL BE
23 MADE AVAILABLE TO THE PUBLIC THROUGH ELECTRONIC AND NON-
24 ELECTRONIC MEANS, UNLESS NON-DISCLOSURE IS WARRANTED BY
25 NATIONAL SECURITY.

mp

1 Section 7. – A new section to be known as SECTION 1001-A is hereby
2 inserted after Section 1001 of the TCCP, as amended, which shall read as follows:

3 “SEC. 1001-A. *TRANSMISSION OF ELECTRONIC COPY OF MANIFEST*
4 *PRIOR TO ARRIVAL* – AN ELECTRONIC COPY OF THE CARGO AND
5 PASSENGER MANIFEST OF THE VESSEL ENGAGED IN FOREIGN TRADE SHALL
6 BE TRANSMITTED TO THE BUREAU OF CUSTOMS AT LEAST SIX (6) HOURS
7 PRIOR TO THE VESSEL'S ARRIVAL IN THE PORT OF ENTRY; *PROVIDED*, THAT
8 IF THE VESSEL IS AN AIRCRAFT, THE MANIFEST SHALL BE TRANSMITTED TO
9 THE BUREAU OF CUSTOMS AT LEAST ONE (1) HOUR PRIOR TO THE
10 AIRCRAFT'S ARRIVAL IN THE PORT OF ENTRY.”

11 Section 8. – Section 1007 of the TCCP, as amended, is hereby further amended
12 to read as follows:

13 “SEC. 1007. *Manifests for Commission on Audit and Collector. – Papers to be*
14 *Deposited with Consul.* – Immediately after the arrival of a vessel from a foreign port,
15 the master shall deliver or mail to the Chairman, Commission on Audit, Manila, and
16 the DEPUTY COMMISSIONER FOR AUDIT AND TRANSPARENCY, a copy of the
17 cargo manifests properly endorsed by the boarding officer, and the master shall
18 immediately present to the Collector the original copy of the cargo manifests properly
19 endorsed by the boarding officer, and, for inspection, the ship's register or other
20 documents in lieu thereof, together with the clearance and other papers granted to
21 the vessel at the port of departure for the Philippines.”

22 Section 9. – Section 1210 of the TCCP, as amended, is hereby further amended
23 to read as follows:

24 “SEC. 1210. *Disposition of Imported Articles Remaining on Vessel After Time*
25 *for Unloading.* – Imported articles remaining on board any vessel after the expiration

1 of the said period for discharge and not reported for transshipment to another port,
2 may be unladen by customs authorities and stored at the vessel's expense.

3 "Unless prevented by causes beyond the vessel's control, such as port
4 congestion, strikes, riots, or civil commotions, failure of vessel's gear, bad weather,
5 and similar causes, articles so stored shall be entered within FIFTEEN (15) DAYS,
6 which shall not be extendible, from the date of discharge of the last package from the
7 vessel or aircraft and shall be claimed within fifteen (15) days, which shall likewise
8 not be extendible from the date of posting of the notice to claim in conspicuous places
9 in the Bureau of Customs. If not entered or not claimed, it shall be disposed of in
10 accordance with the provisions of this Code."

11 Section 10. - A new section to be known as SECTION 1401-A is hereby
12 inserted after Section 1401 of the TCCP, as amended, which shall read as follows:

13 "SEC. 1401-A. *VALUATION LIBRARY.* - THE COMMISSIONER SHALL
14 ENSURE THAT THERE SHALL BE A VALUATION LIBRARY, WHICH SHALL BE
15 KEPT UP TO DATE AND MAINTAINED USING THE BEST AVAILABLE
16 TECHNOLOGY. THE VALUATION LIBRARY SHALL BE MADE READILY
17 AVAILABLE TO THE PUBLIC.

18 Section 11. - Section 1403 of the TCCP, as amended, is hereby further
19 amended to read as follows:

20 "SEC. 1403. *Duties of Customs Officer Tasked to Examine, Classify, and*
21 *Appraise Imported Articles.* - The customs officer tasked to examine, classify, and
22 appraise imported articles shall determine whether the packages designated for
23 examination and their contents are in accordance with the declaration in the entry,
24 invoice, and other pertinent documents and shall make a return in such a manner to
25 indicate whether the articles have been truly and correctly declared in the entry as

1 regard their quantity, measurement, weight, and tariff classification and not imported
2 contrary to law. THE CUSTOMS OFFICER SHALL LIKEWISE CERTIFY UNDER
3 OATH IN THE RETURN THAT HE USED THE VALUATION LIBRARY IN
4 CLASSIFYING AND APPRAISING THE IMPORTED ARTICLES. He shall ALSO
5 submit a sample to the laboratory for analysis when feasible to do so and when such
6 analysis is necessary for the proper classification, appraisal, and/or admission into the
7 Philippines of imported articles.

8 "Likewise, the customs officer shall determine the unit of quantity in which
9 they are usually bought and sold and appraise the imported articles in accordance
10 with Section 201 of this Code.

11 "Failure on the part of the customs officer to comply with his duties shall
12 subject him to the penalties prescribed under 3604 of this Code."

13 Section 12. - Section 1801 of the TCCP, as amended, is hereby further
14 amended to read as follows:

15 "SEC. 1801. *Abandonment, Kinds and Effects of.* - An imported article is
16 deemed abandoned under any of the following circumstances:

- 17 a. When the owner, importer, consignee of the imported article expressly
18 signifies in writing to the Collector of Customs his intention to abandon;
- 19 B. When the owner, importer, consignee, or interested party after due notice,
20 fails to file an entry within thirty (30) days, which shall not be extendible,
21 from the date of discharge of the last package from the vessel or aircraft, or
22 having filed such entry, fails to claim his importation within fifteen (15)
23 days, which shall not likewise be extendible, from the date of posting of
24 the notice to claim such importation; OR WHEN THERE IS A WRITTEN
25 DENIAL OF OWNERSHIP FROM THE PERSON INDICATED ON THE

1 MANIFEST OR BILL OF LADING AS THE OWNER, IMPORTER, OR
2 CONSIGNEE OF THE IMPORTED ARTICLE.

3 "Any person who abandons an article or who fails to claim his importation as
4 provided for in the preceding paragraph shall be deemed to have renounced all his
5 interests and property rights therein."

6 Section 13. - Section 1802 of the TCCP, as amended, is hereby further
7 amended to read as follows:

8 "SEC. 1802. *Abandonment of Imported Articles.* - An abandoned article shall
9 ipso facto be deemed the property of the Government. ALL ABANDONED
10 ARTICLES SHALL BE AUTOMATICALLY SUBJECT TO AUCTION AND SHALL IN
11 NO CASE BE SUBJECT TO SETTLEMENT OR COMPROMISE.

12 "AN UPDATED LISTING OF ALL ABANDONED SHIPMENTS SCHEDULED
13 FOR AUCTION SHALL BE POSTED ON THE OFFICIAL WEBSITE OF THE
14 BUREAU OF CUSTOMS AND AT THE MAIN ENTRANCE OF CUSTOMS HOUSES.

15 "Nothing in this section shall be construed as relieving the owner or importer
16 from any criminal liability which may arise from any violation of law committed in
17 connection with the importation of the abandoned article.

18 "Any official or employee of the Bureau of Customs or of other government
19 agencies who, having knowledge of the existence of an abandoned article or having
20 control or custody of such abandoned article, fails to report to the Collector within
21 twenty-four (24) hours from the time the article is deemed abandoned shall be
22 punished with the penalties prescribed in Paragraph 1, Section 3604 of this Code (RA
23 7651, June 4, 1993)."

24 Section 14. - Section 1901 of the TCCP, as amended, is hereby further
25 amended to read as follows:

1 "SEC. 1901. *Establishment and Supervision of Warehouses.* – When the
2 business of the port requires such facilities, the Collector, subject to the approval of
3 the Commissioner, shall designate and establish INDUSTRY-SPECIFIC warehouses
4 for use as a public and private bonded warehouses, sheds or yards, or for other special
5 purposes.

6 "All such warehouses and premises shall be subject to the supervision of the
7 Collector, who shall impose such conditions as may be deemed necessary for the
8 protection of the revenue and of the articles stored therein.

9 Section 15. – Section 1902 of the TCCP, as amended, is hereby further
10 amended to read as follows:

11 "SEC. 1902. *Responsibility of Operators.* – The operators of bonded
12 warehouses in case of loss of the imported articles stored shall be liable for the
13 payment of duties and taxes due thereon.

14 "The government assumes no legal responsibility in respect to the safekeeping
15 of articles stored in any customs warehouse, sheds, yards, or premises.

16 "THE OPERATORS OF THE BONDED WAREHOUSES SHALL, FOR
17 LEGITIMATE PURPOSES, MAKE AVAILABLE TO THE PUBLIC AN INVENTORY
18 OF ALL ARTICLES STORED THEREIN. FAILURE TO DO SO IS A MANDATORY
19 GROUND FOR THE REVOCATION OF LICENSE TO OPERATE A BONDED
20 WAREHOUSE."

21 Section 16. – Section 1903 of the TCCP, as amended, is hereby further
22 amended to read as follows:

23 "SEC. 1903. *Bonded Warehouses.* – Application for the establishment of
24 bonded warehouses must be made in writing and filed with the Collector, describing
25 the premises, the location, and capacity of the same, the purpose for which the

1 building is to be used, AND THE INDUSTRY TO WHICH IT BELONGS. THE
2 APPLICATION SHALL LIKEWISE BE ACCOMPANIED BY VERIFIED COPIES OF
3 DOCUMENTS INDICATING THE OWNERSHIP AND THE FINANCIAL
4 CAPACITY OF THE BONDED WAREHOUSE.

5 "Upon receipt of such application, the Collector shall cause an examination of
6 the premises, with reference particularly to its location, construction and means
7 provided for the safekeeping of articles. THE COLLECTOR SHALL LIKEWISE
8 DETERMINE THE OWNERSHIP OF THE APPLICANT BONDED WAREHOUSE
9 TO VERIFY OWNERS OF A BONDED WAREHOUSE WHICH HAD BEEN
10 CLOSED DUE TO ITS NON-COMPLIANCE WITH CUSTOMS LAWS AND
11 REGULATIONS HAS ANY INTEREST THEREIN. IF THE APPLICATION IS found
12 satisfactory, THE COLLECTOR may authorize its establishment, and accept a bond
13 for its operation and maintenance. The operator of such bonded warehouse shall pay
14 an annual supervision fee in an amount to be fixed by the Commissioner. The bonded
15 warehouse officers and other employees thereof shall be regular customs employees
16 who shall be appointed in accordance with the Civil Service Law, rules and
17 regulations.

18 "THE PAID-UP CAPITAL AND NET ASSETS OF THE BONDED
19 WAREHOUSE SHALL BE SET AT AN AMOUNT DETERMINED BY THE
20 COMMISSIONER AS SUFFICIENT TO COVER THE VALUE OF GOODS OF
21 UNLIQUIDATED ENTRIES WHICH SHAL BE STORED THEREIN AT ANY GIVEN
22 TIME. OTHERWISE, THE APPLICATION SHALL NOT BE GRANTED, AND AN
23 AUTHORITY ALREADY GRANTED SHALL BE REVOKED.

24 "THESE REQUIREMENTS SHALL LIKEWISE EXTEND TO REGISTERED
25 LOCATORS OPERATING UNDER THE CHARTERS OF THE PHILIPPINE

1 ECONOMIC ZONE AUTHORITY, THE SUBIC BAY METROPOLITAN
2 AUTHORITY, AND OTHER FREEPORTS AND ECOZONES.”

3 Section 17. – A new section to be known as SECTION 1903-A is hereby
4 inserted after Section 1903 of the TCCP, as amended, which shall read as follows:

5 “SEC. 1903-A. *REGULAR AUDIT OF BONDED WAREHOUSE.* A
6 REGULAR AUDIT OF ALL BONDED WAREHOUSES SHALL BE CONDUCTED BY
7 THE COLLECTOR, WHICH AUDIT SHALL BE SUBJECT TO AUTOMATIC
8 REVIEW BY THE DEPUTY COMMISSIONER FOR AUDIT AND TRANSPARENCY.
9 UPON PETITION OF AN INTERESTED PARTY, A SECOND AUDIT MAY BE
10 CONDUCTED BY THE DEPUTY COMMISSIONER OR AN INDEPENDENT AUDIT
11 MAY BE MADE UPON THE INSTANCE OF THE PETITIONING PARTY IN
12 COORDINATION WITH THE DEPUTY COMMISSIONER.

13 Section 18. – Section 1904 of the TCCP, as amended, is hereby further
14 amended to read as follows:

15 “SEC. 1904. *Irrevocable Domestic Letter of Credit or Bank Guarantee or*
16 *Warehousing Bond.* – After articles declared in the entry for warehousing shall have
17 been examined and the duties, taxes, and other charges shall have been determined,
18 the Collector shall require from the importer an irrevocable domestic letter of credit,
19 bank guarantee, or CASH bond equivalent to the amount of such duties, taxes and
20 other charges conditioned upon the withdrawal of articles within the period
21 prescribed in section nineteen hundred and eight of this Code and for the payment of
22 any duties, taxes and other charges to which the articles shall be then subject and
23 upon compliance with all legal requirements regarding their importation.”

24 Section 19. – Section 1905 of the TCCP, as amended, is hereby further
25 amended to read as follows:

1 “SEC. 1905. *Discontinuance of Warehouses.* – The use of any warehouse may
2 be discontinued by the Collector at any time when conditions so warrant; or in the
3 case of a private warehouse, upon receipt of written request to that effect from the
4 operator thereof of the premises, provided all the requirements of the law and
5 regulations have been complied with by said operator. A LEGITIMATE INDUSTRY
6 GROUP MAY LIKEWISE RECOMMEND TO THE COLLECTOR THE
7 DISCONTINUANCE OF THE BONDED WAREHOUSE ON GROUNDS OF NON-
8 COMPLIANCE WITH THE REQUIREMENTS OF LAW AND REGULATIONS.
9 Where the dutiable article is stored in such premises, the same must be removed at
10 the risk and expense of the operator and the premises shall not be relinquished, nor
11 discontinuance of its use authorized, until a careful examination of the account of the
12 warehouse shall have been made. Discontinuance of any warehouse shall be effective
13 upon official notice and approval thereof by the Collector.”

14 Section 20. – Section 1906 of the TCCP, as amended, is hereby further
15 amended to read as follows:

16 “SEC. 1906. *Entry of Articles for Warehousing.* – The entry of articles for
17 warehousing shall be in the required number of copies in the prescribed form, and
18 shall be verified as in the entry of the articles for consumption. No warehousing
19 entry shall be accepted for any article if from the entry, supporting documents and/ or
20 information such article is imported contrary to any law. THE CUSTOMS OFFICER
21 MAKING THE ENTRY SHALL BE RESPONSIBLE FOR TRANSMITTING A COPY
22 OF THE SAME TO THE DEPUTY COMMISSIONER FOR AUDIT AND
23 TRANSPARENCY.”

24 Section 21. – Section 1907 of the TCCP, as amended, is hereby further
25 amended to read as follows:



1 "SEC. 1907. *Withdrawal of Articles from Bonded Warehouse.* - Articles
2 entered under irrevocable domestic letter of credit, or CASH bond may be withdrawn
3 at any time for re- exportation; *PROVIDED THAT PROOF IS SHOWN THAT THE*
4 *ORDER TO IMPORT THE SUBJECT ARTICLES HAS BEEN CANCELLED;*
5 *PROVIDED FURTHER THAT THE ARTICLES TO BE WITHDRAWN DO NOT*
6 *AMOUNT TO MORE THAN FIFTY PERCENT (50%) OF THE TOTAL INVENTORY*
7 *OF THE BONDED WAREHOUSE.*

8 "The withdrawal must be made ONLY BY THE IMPORTER OF THE
9 ARTICLES BEING WITHDRAWN OR BY A REPRESENTATIVE whose authority
10 must appear in writing upon the face of the withdrawal entry."

11 Section 22. - Section 1908 of the TCCP, as amended, is hereby further
12 amended to read as follows:

13 "SEC. 1908. *Limit to Period of Storage in Bonded Warehouse.* - Articles duly
14 entered for warehousing may remain in bonded warehouses for a maximum period of
15 THIRTY (30) DAYS from the time of RECEIPT OF THE WAREHOUSE. Articles not
16 withdrawn at the expiration of the prescribed period shall be DEEMED
17 ABANDONED AND SUBJECT TO DISPOSITION IN ACCORDANCE WITH THE
18 PROVISIONS OF THIS CODE."

19 Section 23. - A new section to be known as SECTION 1908-A is hereby
20 inserted after Section 1908 of the TCCP, as amended, which shall read as follows:

21 "SEC. 1908-A. *LIQUIDATION OF WAREHOUSING ENTRIES.*—THE
22 LIQUIDATION OF WAREHOUSING ENTRIES SHALL BE MADE NOT MORE
23 THAN THREE (3) MONTHS FROM THE TIME OF RECEIPT OF THE
24 WAREHOUSE.

25 "A DAILY RECORD OF ALL ENTRIES LIQUIDATED SHALL BE POSTED

1 ON A CONSPICUOUS PLACE IN THE MAIN ENTRANCE OF THE CUSTOMS
2 HOUSE, STATING THE NAME OF THE VESSEL OR AIRCRAFT, THE PORT FROM
3 WHICH SHE ARRIVED, THE DATE OF HER ARRIVAL, THE NAME OF THE
4 IMPORTER, AND THE SERIAL NUMBER AND THE DATE OF ENTRY. THE
5 COLLECTOR MUST ALSO KEEP A DAILY RECORD OF ALL ADDITIONAL
6 DUTIES, TAXES AND OTHER CHARGES FOUND UPON LIQUIDATION, AND
7 NOTICE SHALL PROMPTLY BE SENT TO THE INTERESTED PARTIES.”

8 Section 24. – Section 2001 of the TCCP, as amended, is hereby further
9 amended to read as follows:

10 “SEC. 2001. *Establishment of Bonded Manufacturing Warehouses.* – All
11 articles manufactured in whole or in part of imported materials, and intended for
12 exportation without being charged with duty, shall, in order to be so manufactured
13 and exported, be made and manufactured in manufacturing warehouses under such
14 rules and regulations as the Commissioner of Customs with the approval of the
15 Secretary of Finance, shall prescribe: Provided, That the manufacturer of such articles
16 shall first file a satisfactory bond for the faithful observance of all laws, rules and
17 regulations applicable thereto; PROVIDED FURTHER, BONDED
18 MANUFACTURING WAREHOUSES SHALL LIKEWISE BE SUBJECT TO THE
19 PROVISIONS UNDER TITLE V, PART 1 OF THIS CODE, AS AMENDED;
20 PROVIDED FINALLY, THAT THESE REQUIREMENTS SHALL EXTEND TO
21 REGISTERED LOCATORS OPERATING UNDER THE CHARTERS OF THE
22 PHILIPPINE ECONOMIC ZONE AUTHORITY, THE SUBIC BAY METROPOLITAN
23 AUTHORITY, AND OTHER FREEPORTS AND ECOZONES.”

24 Section 25. – Section 2002 of the TCCP, as amended, is hereby further
25 amended to read as follows:

1 "SEC. 2002. *Exemption from Duty.* -

2 a. xxx

3 b. Any imported material used in the manufacture of such articles, and any
4 package, covering, brand and label used in putting up the same may, under
5 the regulation prescribed by the Commissioner, with the approval of the
6 Secretary of Finance, be conveyed without the payment of duty into any
7 bonded manufacturing warehouse, and imported articles may, under the
8 aforesaid regulations, be transferred without the payment of duty from any
9 bonded warehouse into any bonded manufacturing warehouse, or to duly
10 accredited sub-contractors of manufacturers who shall process the same
11 into finished products for exports and deliver such finished products back
12 to the bonded manufacturing warehouse, therefrom to be exported; but
13 this privilege shall not be held to apply to implements, machinery or
14 apparatus to be used in the construction or repair of any bonded
15 manufacturing warehouse: Provided, however, That the materials
16 transferred or conveyed into any bonded manufacturing warehouse shall
17 be used in the manufacture of articles for exportation within a period of
18 THIRTY (30) DAYS from date of such transfer or conveyance into the
19 bonded manufacturing warehouse, which period may for sufficient reasons
20 be further extended for not more than THIRTY (30) DAYS by the
21 Commissioner. Materials not used in the manufacture of articles for
22 exportation within the prescribed period shall pay the corresponding
23 duties: Provided, further, That the operation of embroidery and apparel
24 firms shall continue to be governed by Republic Act Numbered Thirty-one
25 hundred and thirty-seven."

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1 Section 26. - Section 2005 of the TCCP, as amended, is hereby further
2 amended to read as follows:

3 "SEC. 2005. *Bonded Smelting Warehouses.* - The plants of manufacturers
4 engaged in smelting or refining, or both, of ores and crude metals, may, upon the
5 filing of CASH bonds, be designated as bonded smelting warehouses. Ores or crude
6 metals may be removed from the vessel or aircraft in which imported, or from a
7 bonded warehouse, into a bonded smelting warehouse without the payment of duties
8 thereon, and there smelted or refined, or both, together with ores or crude metals of
9 home or foreign productions: *Provided*, That the CASH BOND SHALL BE IN a sum
10 equal in amount to the regular duties which would have been payable on such ores
11 and crude metals if entered for consumption at the time of their importation, and the
12 several charges against such bond shall be cancelled upon the exportation or delivery
13 to a bonded manufacturing warehouse established under section twenty hundred and
14 one hereof of a quantity of the same kind of metal equal to the quantity of metal
15 producible from the smelting or refining, or both, of the dutiable metal contained in
16 such ores or crude metals, due allowance being made of the smelter wastage as
17 ascertained from time to time by the Commissioner: *Provided, further*, That the said
18 metals so producible or any portion thereof, may be withdrawn for RE-
19 EXPORTATION UPON PROOF THAT THE ORDER TO IMPORT THE SUBJECT
20 METALS HAS BEEN CANCELLED AND THAT THE METALS TO BE
21 WITHDRAWN DO NOT AMOUNT TO MORE THAN FIFTY PERCENT (50%) OF
22 THE TOTAL INVENTORY OF THE BONDED SMELTING WAREHOUSE: *Provided*,
23 *further*, That on the arrival of the ores or crude metals at such establishments they
24 shall be sampled and assayed according to commercial methods under the supervision
25 of proper government officials: *Provided, further*, That all labor performed and

1 services rendered pursuant to this section shall be under the supervision of the proper
2 customs official and at the expenses of the manufacturer: *Provided, further,* That all
3 regulations for carrying out the provisions of this section shall be prescribed by the
4 Commissioner with the approval of the department head: *Provided, FURTHER,* That
5 the several charges against the bond of any smelting warehouse established under the
6 provisions of this section may be cancelled upon the exportation or transfer to a
7 bonded manufacturing warehouse from any other bonded smelting warehouse
8 established under this section of a quantity of the same kind of metal, in excess of that
9 covered by open bonds, equal to the amount of metal producible from the smelting or
10 refining, or both, of the dutiable metal contained in the imported ores or crude
11 metals, due allowance being made of the smelter wastage as ascertained from time to
12 time by the Commissioner with the approval of the department head: *PROVIDED*
13 *FINALLY, THAT BONDED SMELTING WAREHOUSES SHALL LIKEWISE BE*
14 *SUBJECT TO THE PROVISIONS UNDER TITLE V, PART 1 OF THIS CODE, AS*
15 *AMENDED."*

16 Section 27. - Section 2503 of the TCCP, as amended, is hereby further
17 amended to read as follows:

18 "SEC. 2503. *Undervaluation, Misclassification, and Misdeclaration in Entry.* -
19 When the dutiable value of the imported articles shall be so declared and entered
20 that the duties based on the declaration of the importer on the face of the entry
21 would be less by ten percent (10%) than should be legally collected, or when the
22 imported articles shall be so described and entered that the duties based on the
23 importer's description on the face of the entry would be less by ten percent (10%)
24 than should be legally collected based on the tariff classification, or when the dutiable
25 weight, measurement or quantity of imported articles is found upon examination to

1 exceed by ten percent (10%) or more than the entered weight, measurement or
2 quantity, a surcharge shall be collected from the importer in an amount of not less
3 than the difference between the full duty and the estimated duty based upon the
4 declaration of the importer, nor more than twice of such difference: *Provided, That*
5 an undervaluation, misdeclaration in weight, measurement or quantity of more than
6 thirty percent (30%) between the value, weight, measurement or quantity declared in
7 the entry, and the actual value, weight, quantity, or measurement shall constitute a
8 prima facie evidence of fraud penalized under Sections 2530 AND 3602 of this Code:
9 *Provided, further, That any misdeclared or undeclared imported article/ items found*
10 *upon examination shall ipso facto be forfeited in favor of the Government to be*
11 *disposed of pursuant to the provisions of this Code."*

12 Section 28.—Section 2603 of the TCCP, as amended, is hereby further
13 amended to read as follows:

14 "SEC. 2603. *Mode of Sale.* — In the absence of any special provision, subject to
15 the provisions of Section 2601 above provided, property subject to sale by the customs
16 authorities shall be sold at public auction within FIFTEEN (15) DAYS after ten (10)
17 days notice of such sale shall have been PUBLISHED IN AT LEAST (2)
18 NEWSPAPERS OF GENERAL CIRCULATION, POSTED ON THE OFFICIAL
19 WEBSITE OF THE BUREAU OF CUSTOMS, AND conspicuously posted at the
20 FRONT ENTRANCE OF THE CUSTOMS HOUSE."

21 Section 29. — Section 3601 of the TCCP, as amended, is hereby further
22 amended to read as follows:

23 "SEC. 3601. *Unlawful Importation.* — Any person who shall fraudulently
24 import or bring into the Philippines, or assist in so doing, any article, contrary to law
25 or receive, conceal, buy, sell, or in any way facilitate the transportation, concealment

1 or sale of such article after importation, knowing the same to have been imported
2 contrary to law, shall be guilty of smuggling and shall be punished with:

3 1. A fine IN AN AMOUNT EQUAL TO THE APPRAISED VALUE PLUS FIFTY
4 PERCENT THEREOF and imprisonment of not less than six months and one
5 day nor more than four years, if the appraised value, to be determined in the
6 manner prescribed under this Code, including duties and taxes, of the article
7 unlawfully imported exceeds FIVE THOUSAND PESOS but does not exceed
8 fifty thousand pesos;

9 2. A fine IN AN AMOUNT EQUAL TO THE APPRAISED VALUE PLUS FIFTY
10 PERCENT THEREOF and imprisonment of not less than FOUR YEARS and
11 one day nor more than eight years, if the appraised value, to be determined in
12 the manner prescribed under this Code, including duties and taxes, of the
13 article unlawfully imported is more than FIFTY thousand pesos but does not
14 exceed one hundred fifty thousand pesos;

15 3. A FINE IN THE AMOUNT EQUAL TO THE APPRAISED VALUE PLUS
16 FIFTY PERCENT THEREOF AND IMPRISONMENT OF NOT LESS THAN
17 EIGHT YEARS AND ONE DAY NOR MORE THAN TWELVE YEARS, IF
18 THE APPRAISED VALUE, TO BE DETERMINED IN THE MANNER
19 PRESCRIBED UNDER THIS CODE, INCLUDING DUTIES AND TAXES, OF
20 THE ARTICLE UNLAWFULLY IMPORTED EXCEEDS ONE HUNDRED
21 FIFTY THOUSAND PESOS BUT DOES NOT EXCEED TWO HUNDRED
22 FIFTY THOUSAND PESOS;

23 4. A FINE IN THE AMOUNT EQUAL TO THE APPRAISED VALUE PLUS
24 FIFTY PERCENT THEREOF AND IMPRISONMENT OF NOT LESS THAN
25 TWELVE YEARS AND ONE DAY NOR MORE THAN FIFTEEN YEARS, IF

1 THE APPRAISED VALUE, TO BE DETERMINED IN THE MANNER
2 PRESCRIBED UNDER THIS CODE, INCLUDING DUTIES AND TAXES, OF
3 THE ARTICLE UNLAWFULLY IMPORTED EXCEEDS TWO HUNDRED
4 FIFTY THOUSAND PESOS BUT DOES NOT EXCEED FIVE HUNDRED
5 THOUSAND PESOS;

6 5. A FINE IN THE AMOUNT EQUAL TO THE APPRAISED VALUE PLUS
7 FIFTY PERCENT THEREOF AND IMPRISONMENT OF NOT LESS THAN
8 FIFTEEN YEARS AND ONE DAY NOR MORE THAN TWENTY YEARS, IF
9 THE APPRAISED VALUE, TO BE DETERMINED IN THE MANNER
10 PRESCRIBED UNDER THIS CODE, INCLUDING DUTIES AND TAXES, OF
11 THE ARTICLE UNLAWFULLY IMPORTED EXCEEDS FIVE HUNDRED
12 THOUSAND PESOS BUT DOES NOT EXCEED ONE MILLION PESOS;

13 6. A FINE IN THE AMOUNT EQUAL TO THE APPRAISED VALUE PLUS
14 FIFTY PERCENT THEREOF AND LIFE IMPRISONMENT, IF THE
15 APPRAISED VALUE, TO BE DETERMINED IN THE MANNER
16 PRESCRIBED UNDER THIS CODE, INCLUDING DUTIES AND TAXES, OF
17 THE ARTICLE UNLAWFULLY IMPORTED EXCEEDS ONE MILLION
18 PESOS.

19 7. The penalty of *prision mayor* TO RECLUSION TEMPORAL shall be imposed
20 when the crime of serious physical injuries shall have been committed and the
21 penalty of *reclusion perpetua* to death shall be imposed when the crime of
22 homicide shall have been committed by reason or on the occasion of the
23 unlawful importation.

24 "In applying the above scale of penalties, if the offender is an alien and the
25 prescribed penalty is not death, he shall be deported after serving the sentence

1 without further proceedings of deportation. If the offender is a government official or
2 employee, the penalty shall be the maximum as hereinabove prescribed and the
3 offender shall suffer an additional penalty of perpetual disqualification from public
4 office, to vote and participate in any public election.

5 "When, upon trial for violation of this section, the defendant is shown to have
6 had possession of the article in question, possession shall be deemed sufficient
7 evidence to authorize conviction unless the defendant shall explain the possession to
8 the satisfaction of the court: Provided, however, That payment of the tax due after
9 apprehension shall not constitute a valid defence in any prosecution under this
10 section."

11 Section 30. -- Section 3603 of the TCCP, as amended, is hereby further
12 amended to read as follows:

13 "SEC. 3603 *Failure to Report Fraud.* - Any master, pilot in command or other
14 officer, owner or agent of any vessel or aircraft trading with or within the Philippines
15 and any employee of the Bureau of Customs who, having cognizance of any fraud on
16 the customs revenue, shall fail to report all information relative thereto to the
17 Collector as by law required, shall be punished by a fine of not LESS THAN ONE
18 HUNDRED THOUSAND PESOS BUT NOT MORE THAN ONE MILLION PESOS
19 AND IMPRISONMENT OF NOT LESS THAN EIGHT YEARS BUT NOT MORE
20 THAN TWELVE YEARS. If the offender is an alien, he shall be deported after serving
21 the sentence. If the offender is a public official or employee, he shall suffer additional
22 penalty of perpetual disqualification to hold public office, to vote and to participate in
23 any election."

24 Section 31. - Section 3604 of the TCCP, as amended, is hereby further
25 amended to read as follows:

1 "SEC. 3604. *Statutory Offenses of Officials and Employees.* - Every official,
2 agent or employee of the Bureau or of any other agency of the government charged
3 with the enforcement of the provisions of this Code, who is guilty of any delinquency
4 herein below indicated shall be punished with a fine of not LESS THAN ONE
5 HUNDRED THOUSAND PESOS BUT NOT MORE THAN ONE MILLION PESOS
6 AND IMPRISONMENT OF NOT LESS THAN EIGHT YEARS BUT NOT MORE
7 THAN TWELVE YEARS and perpetual disqualification to hold public office, to vote
8 and to participate in any public office election:

9 (a) xxx

10 xxx xxx xxx

11 (j) xxx "

12 Section 32. -- Section 3605 of the TCCP, as amended, is hereby further amended
13 to read as follows:

14 "SEC. 3605. *Concealment or Destruction of Evidence of Fraud.* - Any person
15 who willfully conceals or destroys, any invoice, book or paper relating to any article
16 liable to duty after an inspection thereof has been demanded by the Collector of any
17 collection district or at anytime conceals or destroys any such invoice, book, or paper
18 for the purpose of suppressing any evidence of fraud therein contained, shall be
19 punished with a fine of not LESS THAN ONE HUNDRED THOUSAND PESOS BUT
20 NOT MORE THAN ONE MILLION PESOS AND IMPRISONMENT OF NOT LESS
21 THAN EIGHT YEARS BUT NOT MORE THAN TWELVE YEARS."

22 Section 33. - Section 3606 of the TCCP, as amended, is hereby further amended
23 to read as follows:

24 "SEC. 3606. *Affixing Seals.* - Any person who, without authority affixes or
25 attaches a customs seal, fastening, or mark or any seal, fastening or mark purporting



1 to be a customs seal, fastening or mark to any vessel, vehicle on land, sea or air,
2 warehouse, or package, shall be punished with a fine of not LESS THAN ONE
3 HUNDRED THOUSAND PESOS BUT NOT MORE THAN ONE MILLION PESOS
4 AND IMPRISONMENT OF NOT LESS THAN EIGHT YEARS BUT NOT MORE
5 THAN TWELVE YEARS. If the offender is an alien, he shall be deported after serving
6 the sentence. If the offender is a public official or employee, he shall suffer an
7 additional penalty of perpetual disqualification to hold public office, to vote and to
8 participate in any election."

9 Section 34. Separability Clause. – Any portion or provisions of this Act that may
10 be declared unconstitutional or invalid shall not have the effect of nullifying other
11 portions and provisions hereof as long as such remaining portion or provision can still
12 subsist and be given effect in their entirety.

13 Section 35. Repealing Clause. – All other laws, decrees, executive orders,
14 proclamations and administrative regulations, or parts thereof consistent herewith are
15 hereby repealed or modified accordingly.

16 Section 36. Effectivity Clause. – This Act shall take effect fifteen (15) days after its
17 publication in at least two (2) national papers of general circulation.

18 Adopted.