

REPUBLIC ACT NO. 8181

AN ACT CHANGING THE BASIS OF DUTIABLE VALUE OF IMPORTED ARTICLES SUBJECT TO AN *AD VALOREM* RATE OF DUTY FROM HOME CONSUMPTION VALUE (HCV) TO TRANSACTION VALUE (TV), AMENDING FOR THE PURPOSE SECTION 201 OF TITLE II, PART 1 OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES

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

SECTION 1. Section 201 of Title II, Part 1 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 201. *Basis of Dutiable Value.* – The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding the following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:

(a) Commissions and brokerage fees (except buying commissions); cost of containers; and the cost of packing, whether for labour or materials;

(b) The value of materials, components, parts and items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of the imported goods; materials consumed in the production of imported goods; and engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Philippines and necessary for

the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable;

(c) The amount of royalties and license fees that the buyer must pay, either directly or indirectly, in connection with the goods being valued, as a condition of sale of the goods to the buyer;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

(e) The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;

(f) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and

(g) The cost of insurance.

Where the Commissioner of Customs has reason to doubt the truth or accuracy of the declaration or particulars or documents provided in support of declared value of the importation, he may require the importer to give further explanation thereof and to submit additional documents or other evidence to show that the declared value represents the total amount paid or payable for the imported goods.

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

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

If the dutiable value cannot be determined under the preceding method, it shall be the transaction value of similar goods sold for export to the Philippines at or about the date of exportation of the goods being valued;

If the dutiable value still cannot be determined through the successive application of the two immediately preceding methods, the order of succession of the following methods may be reversed upon request of the importer unless the Commissioner of Customs deems that he will experience real difficulties in determining the dutiable value by using the computed value, in which case, the Commissioner of Customs may refuse such a request subject to the provisions of the General Agreement on Tariffs and Trade (GATT) 1994 and the Uruguay Round Final Act, in which event the valuation of the imported goods shall be determined as indicated hereunder;

(1) The unit price at which the imported goods or identical or similar imported goods are sold domestically, in the same condition as when imported, in the greatest aggregate quantity, to persons not related to the seller, at or about the time of the importation of the goods being valued, subject to the applicable deductions as provided under the GATT 1994 and the Uruguay Round Final Act; or

(2) The computed value which shall be the sum of:

(a) The cost or value of raw materials employed in producing the imported goods;

(b) The amount for profit and general expenses equal to the amount for profit and general expenses as reflected in the sale of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for the Philippines; and

(c) The freight, insurance fees and other transportation expenses for the importation of the goods;

If the dutiable value cannot be determined under any of the preceding methods described above, it shall be determined by

using other reasonable means consistent with the principles and general provisions of GATT 1994, the agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade as contained in the Uruguay Round Final Act, and on the basis of data available in the Philippines.

The correct dutiable value of the imported goods referred to above shall be ascertained by the Commissioner of Customs from reports of revenue or commercial attaches or other Philippine diplomatic officers and from such other sources of information as may be available to the Bureau of Customs. Such values shall be established and published by the Commissioner of Customs from time to time, and such values shall be binding upon the importers and the Bureau of Customs until changed and new value or values are similarly established and published.

Values shall be published in at least one (1) newspaper of general circulation and other publications readily available to the public. Any importer or other interested party who is dissatisfied with the published value shall have fifteen (15) days from the date of publication of such published value the opportunity to file a protest on the questioned value and the Commissioner of Customs shall resolve the protest within fifteen (15) days from receipt of such protest, either by amending the published value or retaining the same. Whatever his decision may be must likewise be published.

If, in the course of determining the dutiable value of imported goods, it becomes necessary to delay the final determination of such dutiable value, the importer may secure the release of the imported goods upon the filing of a bond which shall solely be in cash, in an amount equivalent to the imposable duties and taxes on the imported goods in question plus twenty-five percent (25%) thereof, conditioned upon the payment of customs duties and taxes for which the imported goods may be liable: *Provided, however*, That goods the importation of which is prohibited by law shall not be released under any circumstance whatsoever.

For purposes of the preceding paragraphs, the terms:

(1) "Reasonable doubt" shall refer to any condition that creates a probable cause to make the Commissioner of Customs believe in the inaccuracy of the invoice value of imported goods as reflected by the importer in his customs declaration, for valuation purposes. Such condition may include but is not limited to any of the following situations:

(a) If the sale or price is subject to some consideration for which a value cannot be determined with respect to the goods being valued such as:

- (i) When the seller fixes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (ii) When the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller;
- (iii) When the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on the condition that he will receive a specified quantity of finished goods;

(b) Or, if part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8 of the agreement in the implementation of Article VII of the General Agreement on Tariffs and Trade as contained in the Uruguay Round Final Act; and

(c) If the buyer and the seller are related to one another, and such relationship influenced the price of the goods. Such persons shall be deemed related if:

- (i) They are officers or directors on one another's businesses;

- (ii) They are legally recognized partners in business;
- (iii) They are employer and employee;
- (iv) Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stock or shares of both seller and buyer;
- (v) One of them directly or indirectly controls the other;
- (vi) Both of them are directly or indirectly controlled by a third person;
- (vii) Together they directly or indirectly control a third person; or
- (viii) They are members of the same family including brothers and sisters, (whether by whole or half blood) spouse, ancestors, and lineal descendants.

(2) "Identical goods" shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.

(3) "Similar goods" shall mean goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark shall be among the factors to be considered in determining whether goods are similar.

SEC. 2. *Transitory Provisions.* – Upon the effectivity of this Act and until such time when the Congress authorizes the shift to transaction value before January 1, 2000 as provided under the Section 3 of this Act, the dutiable value of an imported article subject to an *ad valorem* rate of duty shall be based on the export value at which, at the time of exportation, the same or identical,

like, or similar article is freely offered for sale in the principal export markets of the exporting country for exportation to the Philippines, in the usual wholesale quantities and in the ordinary course of trade (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the export value nearest to the date of exportation, including the value of all containers, coverings and/or packings of any kind and all other expenses, costs and charges incident to placing the article in a condition ready for shipment to the Philippines, and freight, as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines.

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

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

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

- (a) Not more than twenty-five percent (25%) of the domestic wholesale selling price for expenses and profits; and
- (b) Duties and taxes paid thereon.

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

Values shall be published in a manner that will make them readily available to the public. Any importer or other interested party who is dissatisfied with the published value shall have fifteen (15) days from the date of publication of such published values the opportunity to file protest on the questioned value, and the Commissioner of Customs shall resolve the protest within fifteen (15) days from such protest either by amending the published value or retaining the same. Whatever his decision may be must likewise be published.

If, in the course of determining the dutiable value of imported goods, it becomes necessary to delay the final determination of such dutiable value, the importer may secure the release of the imported article upon the filing of a bond which shall solely be in cash in an amount equivalent of the imposable duties and taxes on the imported goods in question plus twenty-five percent (25%) thereof, conditioned upon the payment of customs duties and taxes for which the imported goods may be liable: *Provided, however,* That imported goods the importation of which is prohibited by law shall not be released under any circumstances whatsoever.

SEC. 3. In the interest of national economy, general welfare and/or national security, the Congress shall, upon recommendation of the President, by joint resolution, order the shift to transaction value, as provided under Section 1 of this Act, as the basis of dutiable value of an imported article subject to an *ad valorem* rate of duty even before January 1, 2000.

SEC. 4. The Secretary of Finance shall, upon the recommendation of the Commissioner of Customs, promulgate the necessary rules and regulations for the effective implementation of this Act.



SEC. 5. The Commissioner of Customs may delegate his power to determine dutiable values and to release imported goods under cash bond as provided in this law in cases where there are no established and published values covering the importation: *Provided*, That in such cases, the Collector of Customs concerned shall immediately render a complete report to the Commissioner of Customs and the latter shall, without delay, establish and publish the correct dutiable value or values for the importation, after which all Collectors of Customs shall be guided accordingly in the assessment of import duties and taxes on similar or like importations.

SEC. 6. The Commissioner of Customs shall create such body or bodies to receive and hear protests regarding published values. Such body or bodies shall hear and receive the evidence and shall submit its or their recommendations to the Commissioner of Customs. The hearing body shall submit its report in writing and shall convey to all interested parties whatever decision reached by the commissioner thereon. During the effectivity of any published values, any interested party may petition the Commissioner of Customs for a review of the published value for the purpose of raising or lowering such value.

SEC. 7. All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 8. This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in at least two (2) newspapers of general circulation, whichever date comes earlier.

Approved, March 28, 1996.