

Pre-Bar Review
Tariff and Customs Code
Bar Exams for 2016

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TARIFF AND CUSTOMS CODE

**The first TCC (R.A. 1937) was
enacted on June 22, 1957
effective on July 1, 1957**

**The code now in force is the ASEAN
HARMONIZED TARIFF
NOMENCLATURE established by
the members of the Asean in Aug
7, 2003, as amended.**

A. Fundamental Principles

A. What is meant by “tariff”? By “duties”?

“Tariff” means the “book of rates.”

More precisely, it means a book, (Book One of the TCC), which contains the particular rates of tax imposed upon (a) importation of specific kinds or classes of goods into (Title I) or (b) exportation (Title III) out of the Philippines.

“Duties” or “customs duties” refers to the tax that is supposed to be collected when good are imported or exported.

**Example of a Page in
Book I –Tariff Law
Title I – Import Tariff
(to show “Tariff” &
“Duty”)**

**Schedule I
LIVE ANIMALS; ANIMAL PRODUCTS.
CHAPTER 1
LIVE ANIMALS.**

NOTES:

1. This Chapter covers all live animals except fish, crustaceans, mollusks (Chapter 3) and microbic cultures (heading No. 30.02).
2. Any reference in this Chapter to a particular genus or species, except where the context otherwise requires, includes a reference to the young of that genus or species.

Item for import

01.01 Live horses, asses, mules and hinnies

A. Sucking foals -Free

B. Other -----hd. P100.000

Tax

01.02 Live bovine animals (including buffalo and carabao)

:A. Sucking calves –Free

B. Other -----hd. P20.000

01.03 Live pigs

0.1.04 Live sheep and goats.....

**:CHAPTER 2
MEAT AND EDIBLE MEAT OFFALS.**

B. What is the General Rule on the liability of imported goods to duty?

All articles, when imported from any foreign country into the Philippines, **shall be subject to duty upon each importation,** even though previously exported from the Philippines, **except as otherwise specifically provided** for in this Code or in other laws.

(TCC, **Sec. 101.** *Imported Articles Subject to Duty*)

B.1 Are importations made by the Government taxable?

Yes. Except those provided for Sec. 105 of the TCC, all importations by the Government for its own use, or that of its subordinate branches or instrumentalities, or corporations, agencies, or instrumentalities owned or controlled by the government **shall be subject to the duties, taxes, fees, and other charges provided for in the TCC.** (Sec. 1205)

Is this not taking money from one pocket and putting it in another?

Yes, that is why upon certification of the head of the department or political subdivision concerned, with the approval of the Auditor General, that the imported article is actually being used by the Government or any of its political subdivision concerned, the amount of duty, tax, fee or charge is refunded to the entity which paid it.

C. What is the purpose of imposing customs duties?

Customs duties are imposed for any one and, sometimes, for all of the following purposes:

1. Raise revenue – BoC second only to BIR
2. Support foreign policy – Flexible Tariff Clause
3. Protect domestic economy – Prohibited importations
4. Implement commitment to other nations – Asean Integration

D. What is meant by the “flexible tariff clause” (FTC) in the Constitution? (Asked at least once)

The FTC in the Constitution is that provision that empowers Congress, by law, to authorize the President, to fix within specified limits and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government. (Section 28(2), Article VI, Constitution)

D.1 Has Congress exercised that power to delegate taxing power to the President?

Yes. In the interest of national economy, general welfare, and/or national security, and subject to the limitations prescribed in the TCC, the President upon recommendation of the NEDA, is empowered to (a) increase (by no higher than 100% ad val), reduce, or remove existing rates of protective duty (b) establish import quotas or ban imports of any commodity; and (c) impose an additional duty on all imports not exceeding 10% ad val whenever necessary. (Sec 401a)

D.2 Is the President also authorized to modify tariff rates to promote foreign trade?

Yes. For the **purpose of expanding foreign markets for Philippine products** as a means of assistance in the economic development of the country, in overcoming domestic unemployment, in increasing the purchasing power of the Philippine peso, and in establishing and maintaining better relationship between the Philippines and other countries, the President may modify tariff rates...

In what ways may the President modify tariff rates in to promote foreign trade?

...the President may from time to time

enter into trade agreements with foreign governments or instrumentalities, and

modify import duties (including any necessary change in classification) and other import restrictions as may be required or appropriate to carry out and promote foreign trade with other countries... (Sec. 402a)

What goods are subject to the export tariff and duty?

Certain wood products, mineral products (metallic and non-metallic), plants and vegetable products, and animal products, are. **subject to Export Duty on the gross F.O.B. value at the time of shipment based on the prevailing rate of exchange. (Sec. 514, 1st par)**

What is meant by “premium duty”?

“Premium duty” is the duty imposed, in addition to export duties, on the difference between the current price as established by the Bureau of Customs and the base price of the products, in accordance with the schedule specified under the law (Sec. 514, 2nd par)

Is there also a Flexible Tariff Clause for export products?

Yes. The President, upon the recommendation of the NEDA, may (a) subject any of the products subject to Export and Premium duties to higher or lower rates, (b) include additional products, (c) exclude or exempt any products, or (d) additionally subject any product to export quota. (Sec. 515)

E. Requirements of Importation

(Asked at least 4 times)

1. When does importation begin and when does importation end?

Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein.

Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry AND the legal permit for withdrawal shall have been granted, or in the case of tax free importations, until they have legally left the jurisdiction of the customs. (Sec. 1202)

2. Where may importation be effected?

All articles imported into the Philippines, whether subject to duty or not, **shall be entered through a customhouse at a port of entry.** (Sec. 1201)

3. Who is deemed the owner of imported goods?

The owner of an imported article **is the person to whom the same is consigned.** The **holder of a bill of lading** duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. (Sec. 1203)

4. Obligations of Importer

- a. Ensure his goods are listed in the vessel's Cargo Manifest
- b. File or make a formal or informal (less than Php 2,000 or personal luggage) import entry
- c. Declare correct weight or value
- d. Pay the duties
- e. Keep records

F. Importations in violation of tax credits under the TCCP (Asked at least 4 times)

What are the common kinds of importations that violate the tax credit provisions of the Tariff and Customs Code?

1. Smuggling
2. Other fraudulent practices

What is smuggling?

Smuggling is an act of any person who shall fraudulently import or bring into the Philippines, or assist in doing so, any article, contrary to law or to receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law. It includes the exportation of articles in a manner contrary to law.

(Sec. 3519)

What are contrabands?

“Contrabands” are articles of prohibited importation or exportation. (Sec. 3519)

What are the other fraudulent practices?

Other fraudulent practices include:

- a) Unlawful importation
- b) Entry or Exit of articles by means of false or fraudulent practices, invoices, declarations, affidavits or other documents
- c) Entry of goods at less than their true weight or upon a false classification as to quality or value

- d. Payment of less than the amount due
- e. Filing of any false or fraudulent claim for the payment of drawback or refund of duties upon exportation of the merchandise
- f. Filing any affidavit, certificate or other document to secure to him or others the payment of any drawback, allowance, or refund of duties on the exportation of merchandise greater than that legally due

G. Classification of Imported Goods

(Asked at least 5 times)

Imported goods are classified into:

- a. **Taxable importation** – those permitted to be imported. **Ex: flour wheat**
- b. **Prohibited importation** – those NOT permitted to be imported. **Ex: pornographic materials**
- c. **Conditionally free importation (aka “regulated” [Sec of Finance v. Kutangbato, Aug 7, 2013) –** those exempt from the payment of import duties upon compliance with the formalities prescribed in accordance with law, or with the regulations which shall be promulgated by the Commissioner of Customs with the approval of the Secretary of Finance. **Ex: Returning residents**

H. Classification of Duties

(Asked at least 4 times)

Duties are classified into:

- a. **Regular or Ordinary** Duties - those duties imposed by reason of the mere fact of importation and are usually based on dutiable value or dutiable weight
- b. **Special** Duties – those imposed when certain conditions are present, such as, when the importation, because of factors other than its intrinsic worth, is considered either harmful to the economy, or incompatible with our national interest.

H1. How is the amount of the tax base of regular duties determined?

If tax base is:

a. **Ad valorem** or dutiable value- basis is

(a) transaction value of **the actual importation itself**;

(b) transaction value of **identical goods**;

(c) transaction value of **similar good**;

(d) **deductive** value;

(e) **computed** value; or

(f) **fallback** value

b. **Specific** – basis is specification, eg weight

What is the order of the methods used in determining dutiable value?

- **Method One: transaction value of the goods imported** – the price actually paid or payable when sold for export to the Philippines, with adjustments
- **Method Two: transaction of identical goods –transaction value of identical (same in all respects)** goods sold for export to the Philippines and exported at or about the same time

- Method Three: Transaction value of similar goods— “similar”, i.e. although not alike in all respects, have characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.
- Method Four: Deductive value – based on the unit price at which the imported goods, or identical or similar goods, are sold in the Philippines, in the same condition as when imported in the greatest aggregate quantity at or about time of importation

- **Method Five: Computed value** – the sum of cost or value of materials in processing the imported goods, amount of profit and general expenses usually reflected in the sale of goods **by producers in the country of export**, freight and insurance, cost of packaging, etc.
- **Method Six: Fallback value** – value determined by using **other reasonable means and on the basis of data available in the Philippines** (Sec 201)

Describe the process of paying the regular customs duties.

- **Step One: Making of the import entry** (formal or informal) -Imported articles must be “entered” in the customhouse at the port of entry within thirty days from date of discharge of the last package from the vessel by the importer, or authorized person (Sec. 1301 & ff)
- **Step Two: Examination, classification and appraisal** of the imported articles. (Sec 1401 & ff)
- **Step Three: Liquidation (payment) of duties and withdrawal** of the articles from customs.(Sec. 1601 & ff)

H2. Kinds of Special Duties

1. **Anti-dumping duty**- imposed by the Secretary of Trade and Industry or the Secretary of Agriculture Finance **when the imported articles are, after investigation, are to be being sold or likely to be sold in the Philippines, at a price less than its fair value AND the importation or sale of which might injure, or prevent the establishment of, or is likely to injure an industry in the Philippines;**

2. **Countervailing duty** – Imposed by the Secretary of Trade and Industry or the Secretary of Agriculture, after investigation, on articles upon the production, manufacture or export of which any **bounty, subsidy or subvention is directly or indirectly granted in the country of origin and/or exportation**, AND the importation is likely to **materially injure** an established industry, or prevent or considerably retard the establishment of an industry in the Philippines;

3. **Discriminatory Duty** – Imposed by the President, in the amount not exceeding 100 per cent of the existing rates upon articles from any foreign country that —

(1) Imposes any unreasonable charge, exaction, regulation or limitation on Philippine goods which is not equally enforced upon the like articles of every foreign country; or .

(2) Discriminates in fact against the commerce of the Philippines in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction or prohibition, in such manner as to place the commerce of the Philippines at a disadvantage compared with the commerce of any foreign country.

4. **Marking Duty** – Imposed by the Commissioner of Customs, with approval of the Secretary of Finance, on every article of foreign origin imported into the Philippines requiring their being marked in any official language of the Philippines and in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the Philippines the name of the country of origin of the article.

5. Safeguard duty- (R.A. No. 8800)

a. General safeguard duty – duty imposed by the Secretary of Trade after positively determining that a product is being imported in increased quantities, whether absolute or relative to domestic production, as to be a substantial cause of injury or threat thereof to the domestic industry;

b. Special safeguard duty for agriculture-

imposed by the Commissioner of Customs, upon request of the Secretary of Agriculture through the Secretary of Finance, on an agricultural product, consistent with our international obligations, either (a) when **its cumulative import volume exceeds the trigger volume**, or (b), even if trigger volume is not exceeded, it **fails the price test**.

I. Remedies

I.1 Remedies of the Government (Asked at least 7 times)

a. Administrative (extrajudicial)

a.1 Search, Seizure, forfeiture, arrest

b. Judicial

b.1 Rules on appeal including jurisdiction

Remedies of the Gov't

1. Administrative

- Attachment of Tax Lien (Sec. 1204)
- Imposition of Fines & Forfeitures and Seizure proceedings (Notice to importer is required by due process) – (Com'r of Customs v New Frontier Sugar, June 11, 2014)
- Sale of property in customs custody

Remedies of the Gov't

2. Judicial

- **Action for declaratory relief** – to determine legality of its issuances, like a Customs Memorandum Order classifying certain articles (Com'r of Customs v. Hypermix Feeds Corp, Feb 1, 2012)
- **Action for collection of duties**, usually when lien is lost because goods have been released; liability attaches to the goods

I.2 Remedies of the Taxpayer (Asked at least 3 times)

I.2 a. A taxpayer must first take his **ADMINISTRATIVE REMEDIES** and only after exhaustion of administrative remedies, resort to **JUDICIAL REMEDIES**.

I.2 a1. Administrative Remedies

- a. Protest
- b. Abandonment
- c. Abatement and Refund

b.1. Judicial Remedies

Protest

- **When taxpayer may protest:** he disagrees with the ruling or decision of the Collector of Customs. **Payment under protest essential.**
- **Within what period may protest be filed:** within 15 days from payment or from occurrence of event that rendered payment illegal or erroneous; taxpayer may ask for release pending protest
 - **Effect of failure to protest on time:** action of Collector becomes final, except for manifest errors.

- How a protest case is resolved administratively:
 - The **Collector must conduct a hearing de parte**. Notice is part of due process in protest cases.
 - If the Collector decides against the taxpayer, the **taxpayer has 15 days to appeal to the Commissioner**.
 - The Commissioner, in deciding the appeal, **need not conduct a hearing**.
 - If the taxpayer is **unsatisfied with the ruling of the Commissioner, appeal must be made to the CTA within the 30-day reglementary period**. Taxpayer need not ask for reconsideration where such is futile, as when Com'r says his decision is final. (Com'r v. Oilink International, July 2, 2014)

Abandonment

- **When taxpayer may resort to abandonment:** When taxpayer wants to relieve himself of the duty of paying duties.
- **How:** express or implied
- **Instances of implied abandonment:**
 - (a) failure to file an import entry within 30 days from discharge of goods; or
 - (b) having filed an entry, failure to claim goods within 15 days

- When implied abandonment is deemed effected: when so declared by Collector

- Remedy of owner against implied abandonment:
 - Owner may reclaim the articles at anytime before the goods are sold or otherwise disposed of by paying the duties

- Effect on the owner of abandonment: relief from payment of duties, taxes and other charges, BUT NOT criminal liability

Abatement and Refund

- Instances when refunds may be made:
 - **Abatement cases**, -- eg missing packages, deficiencies in contents before arrival, losses after arrival, dead or injured animals.
 - **Drawback cases** – eg. refund or tax credit granted on duties that had been paid on products that
 - (a) are subsequently exported, eg fuel on vessels in international trade
 - (b) articles used as raw materials for items subsequently exported

- 1.2.b **Judicial Remedies** of Taxpayer
- **From decisions of Commissioner:** in cases involving (a) liability for customs duties, fees, and other money charges; (b) seizure, detention and release of property affected; (c) fines, forfeitures and penalties imposed in relation thereto: and (d) other matters arising under Customs law and other laws administered by Bureau of Customs: **To CTA within 30 days**

- From decisions of Commissioner: in cases involving disregard or denial of due process: regular courts
- From decisions of Sec. of Finance:
 - (a) in cases imposing (1) dumping duty;
(2) countervailing duty;
 - (b) in cases of automatic review by Commissioner of the Collector's decision, where decision is adverse to the Government: CTA

Functions of Tariff Commission

- Study impact of customs and tariff laws on the country
- Relate the rate of duties on raw materials to the finished products
- Investigate effect of tariff relations between the Phil and other countries and effect of importations on the economy
- In general, investigate the operation of tariff and customs law on domestic industries and labor in the country

Thank You
and
Good Luck